

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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

* * * * *

DAILY COPY

JULY 1, 2008

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On the 1st day of July, 2008, the above entitled and numbered cause came on to be heard before said Honorable Court, RICHARD S. SCHMIDT, United States Bankruptcy Judge, held in Corpus Christi, Nueces County, Texas.

Proceedings were reported by machine shorthand.

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1 THE CLERK: All rise.

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

3 It did not work. Did you lose the call? If you did,
4 maybe they'll call right back. Maybe I'm no good at it
5 after a break. Let's go ahead and start -- here we go.
6 Hello?

7 SPEAKER: Good morning, Judge.

8 THE COURT: Isaac Pachulski, is he there?

9 SPEAKER: No, Your Honor.

10 THE COURT: Jeffrey Spiers.

11 MR. SPIERS: Good morning, Your Honor.

12 THE COURT: Jennifer White.

13 MS. WHITE: Present, Your Honor.

14 THE COURT: Ruth Van Meter. Ruth Van
15 Meter.

16 (No response.)

17 THE COURT: Dan Kamensky.

18 (No response.)

19 THE COURT: Michael Neville.

20 MR. PASCUZZI: Your Honor, Mr. Neville
21 will be joining later.

22 THE COURT: Okay. Andy Black.

23 MR. BLACK: Present, Your Honor.

24 THE COURT: Mark Worden.

25 MR. CORNWELL: Good morning, your Honor,

1 John Cornwell sitting in for Mark.

2 THE COURT: Thank you. Eric Winston.

3 MR. WINSTON: Good morning, Your Honor.

4 THE COURT: Francine Montagna.

5 (No response.)

6 THE COURT: Kenneth Crane.

7 (No response.)

8 THE COURT: Ira Herman.

9 SPEAKER: He's here with me, Your Honor,
10 this is (inaudible).

11 THE COURT: Thank you. Nathan Rushton.

12 MR. RUSHTON: Present, Your Honor.

13 THE COURT: John Driscoll.

14 (No response.)

15 THE COURT: Wendy Laubach.

16 MS. LAUBACH: Present, Your Honor.

17 THE COURT: Joli Pecht.

18 (No response.)

19 THE COURT: Dominic Santos.

20 MR. SANTOS: Present, Your Honor.

21 THE COURT: Shaye Dively.

22 MS. DIVELY: Present, Your Honor.

23 THE COURT: Jacob Cherner.

24 MR. CHERNER: Present, Your Honor.

25 THE COURT: Gary Clark.

1 (No response.)
2 THE COURT: David Kitchen.
3 (No response.)
4 THE COURT: Erin Ross.
5 (No response.)
6 THE COURT: Tom Walper.
7 (No response.)
8 THE COURT: Todd Hanson.
9 MR. HANSON: Present, Your Honor.
10 THE COURT: Steven Church.
11 (No response.)
12 THE COURT: Brett Young.
13 (No response.)
14 THE COURT: Heather Muller.
15 MS. MULLER: Good morning, Your Honor.
16 THE COURT: Good morning. Melissa Kahn.
17 MS. KAHN: Good morning, Your Honor.
18 THE COURT: Christopher Johnson.
19 (No response.)
20 THE COURT: Clara Strand.
21 (No response.)
22 THE COURT: Van Durrer, II.
23 (No response.)
24 THE COURT: Wei Wang.
25 MR. WANG: Present, Your Honor.

1 THE COURT: Robert Damstra.

2 MR. DAMSTRA: Present, Your Honor.

3 THE COURT: David McLaughlin.

4 (No response.)

5 THE COURT: Anyone else I didn't call?

6 MR. LEE: Your Honor, Kyung Lee with
7 Diamond McCarthy.

8 THE COURT: All right. Thank you.

9 SPEAKER: And Your Honor, (inaudible).

10 THE COURT: All right. Anyone else?

11 MR. HERMAN: Ira Herman.

12 THE COURT: Okay. In the courtroom,
13 starting over here, we've got Scopac.

14 MS. COLEMAN: Good morning, Your Honor.
15 Kathryn Coleman, Eric Fromme of Gibson, Dunn & Crutcher
16 for Scotia Pacific.

17 THE COURT: Palco.

18 MR. McDOWELL: Good morning, Your Honor,
19 Luckey McDowell on behalf of the Palco debtors.

20 THE COURT: Committee.

21 MR. FIERO: Good morning, Your Honor.
22 John Fiero and Max Litvak of Pachulski Stang for the
23 committee.

24 MR. BRILLIANT: Good morning, Your Honor.
25 Alan Brilliant and Brian Hail for Mendocino Redwoods

1 Company.

2 MR. PENN: Good morning, Your Honor.
3 John Penn, David Neier, Steven Schwartz and Cary
4 Schreiber on behalf of Marathon.

5 MR. JONES: Good morning, Your Honor,
6 Evan Jones, O'Melveny & Myers, representing Bank of
7 America.

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

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

12 MR. GREENDYKE: Good morning, Judge.
13 Bill Greendyke, Richard Krumholz and Louis Strubeck for
14 the Bank of New York as Indenture Trustee for the
15 Noteholders.

16 MR. DAVIDSON: Good morning, Your Honor.
17 Jeffrey Davidson, Stutman, Treister & Glatt appearing on
18 behalf of three Noteholders.

19 MR. GIBBS: Good morning, Judge. Chuck
20 Gibbs from Akin, Gump, Strauss, Hauer & Feld on behalf
21 of CSG Investments and its affiliates.

22 SPEAKER: Henry (inaudible) and David
23 Dunn on behalf of Sierra Pacific.

24 THE COURT: Thank you.

25 MR. McDOWELL: Your Honor, I believe I

1 have one quick housekeeping matter. There was a motion
2 that was filed yesterday, we discussed it briefly, it
3 was the motion regarding an agreement between Scopac and
4 Palco regarding the delivery of July logs. We were
5 hoping to have taken it up yesterday. We had the
6 parties over the night to review it and I'm happy to
7 announce that we do not have any objections that I'm
8 aware of this morning.

9 We do have an urgent timing issue, and
10 that is the mill runs out of the log supply today at
11 approximately 2 p.m. They have a log deck sitting in
12 the back and if the order is entered, they can access
13 the log deck and continue to process the logs.

14 THE COURT: Do you have the order?

15 MR. McDOWELL: The order is actually
16 filed. It's docket 3222, Your Honor.

17 THE COURT: Okay. Well, 3222. Okay. Go
18 ahead.

19 MS. COLEMAN: Your Honor, then we return
20 to the pressing issue, the also pressing issue of
21 Scopac's use of cash collateral to review the bidding in
22 case anybody doesn't remember what happened at the end
23 of the day yesterday. Pursuant to communications last
24 week -- well, let me back up. The Indenture Trustee and
25 Bank of America are the only parties with an interest in

1 the cash collateral in question. They have both signed
2 off on Scopac's request to use cash collateral pursuant
3 to the four week budget. Pursuant to the committee's
4 communications last week, the committee's only objection
5 to the budget was the fact that it didn't want payments
6 to the Indenture Trustee's professionals to be made on
7 the ground that the Indenture Trustee has now been found
8 to be under secured.

9 Yesterday at the hearing the Indenture
10 Trustee graciously agreed to reserve its rights on that
11 point and to go forward with the cash collateral budget.
12 During some time during the course of the hearing the
13 committee was fine with that at 2 o'clock. Somehow
14 during the course of the hearing the committee changed
15 its mind and now has decided that no professionals
16 should be paid so that's where we are at this point.

17 Your Honor, there's just no legal basis
18 for not paying professionals. They are administrative
19 expenses, they are paid pursuant to an order of the
20 Court and they have been throughout the course of the
21 case. If it makes a difference, I assume the Indenture
22 Trustee is still willing to abide by its agreement to
23 reserve its rights. Gibson Dunn will not take any
24 payments this week if that makes a difference. But it
25 is simply unfair to not pay professionals but everybody

1 else, including Bank of America and all the other
2 professionals that Scopac pays and is budgeted for. So
3 we would propose that the order be entered subject to
4 our agreement that we won't take any payment this week
5 but starting next week, there's a lot of confusion this
6 week, we're willing to ride that out.

7 But starting next week, Scopac needs to
8 make all the payments that are provided for in its
9 budget to the extent it has the money. Obviously we
10 can't set up, you know, a money press back in the
11 timberlands and start making money we don't have but we
12 need authority to pay those amounts to the extent we
13 have the funds to do so.

14 MR. LITVAK: Your Honor, Max Litvak,
15 Pachulski Stang on behalf of the creditor's committee.
16 Your Honor, we don't have an objection to the payment of
17 Bank of America's fees, which are quite modest anyway in
18 the budget, they're only \$259,000. Our issue is not a
19 legal one. That's why it wasn't part of our objection.
20 We do have a legal objection to the payment of the
21 Indenture Trustee fees. Mr. Fiero went through that
22 yesterday. Our objection to the payment of the
23 professional fees for everyone else, other than Bank of
24 America, is that as a practical matter, if you look at
25 the company's own budget, they cannot afford to make

1 those payments. And the payments, as I mentioned
2 yesterday, are very significant. Professional fees
3 are -- when you subtract out Bank of America, you're
4 looking at \$4.3 million to be paid in professional fees
5 this month.

6 THE COURT: All of these fees are
7 administrative expenses.

8 MR. LITVAK: They are.

9 THE COURT: All of them have to be paid
10 at confirmation or there has to be an agreement to take
11 less. I don't think there is any agreement with respect
12 to anybody's professional fees about confirmation that
13 I'm aware of. Or maybe there is and I don't know. But
14 we're all here -- I mean, whether the fees are paid now
15 or not paid now, the fees have got to be paid. If they
16 can't be paid, the plan can't be confirmed, isn't that
17 true?

18 MR. LITVAK: That's absolutely right,
19 Your Honor. We're asking for basically an accomodation
20 from Scopac that they not pay the professional fees
21 because they don't have the money. They will go
22 negative. So then they need the Lehman DIP, so that's
23 our objection to the Lehman DIP. You don't need the
24 Lehman DIP because you only need it to pay professional
25 fees so what we're saying is assuming that -- let's see

1 how things play out this week because assuming that the
2 Court does not find that the Noteholders have a material
3 super priority claim and then you go forward and confirm
4 the plan, we would ask Scopac to just hold off for a few
5 weeks and Scopac's professionals to hold off for a few
6 weeks, let's see if the plan will go effective.

7 THE COURT: Bank of America, what did you
8 want to say?

9 MR. JONES: Your Honor, I certainly
10 appreciate the accommodation that the committee has
11 made. I guess I would just like to ask for
12 clarification. I gather the committee also has no
13 objection to Bank of America's interest and bank fees
14 being paid, and quite frankly, Your Honor -- and I'm not
15 going to get into the overall fight. I think the debtor
16 has made clear that if the Court confirms the plan and
17 there's no stay, they aren't going to proceed with the
18 Lehman DIP because they won't need it. But I'm not
19 going to get into the cash flow fight. I just want to
20 make very clear, Your Honor --

21 THE COURT: Well, does this order that's
22 being sought today to make these payments, have in it an
23 approval of the Lehman DIP?

24 MS. COLEMAN: No, Your Honor.

25 THE COURT: Okay.

1 MS. COLEMAN: It has nothing to do with
2 the Lehman DIP.

3 MR. JONES: As I understand, the
4 committee's argument would be that these payments might
5 make the Lehman DIP necessary, if I understand correctly
6 from the debtor, if the Court confirms the Marathon/MRC
7 plan and it isn't stayed, then the debtor doesn't plan
8 to pursue the Lehman DIP because we have some comments
9 on the DIP. Your Honor, the only thing I wanted to
10 mention, the reason this is particularly important to
11 Bank of America and I gather the committee is agreeable
12 is if the interest and bank fees aren't paid, this debt
13 suddenly has to go on a non-accrual basis and reports go
14 off to all regulators in the world and it's just
15 something we would rather avoid. And I understand the
16 committee is prepared to accommodate and doesn't object
17 to --

18 MR. LITVAK: No issue with the bank's
19 fees, interest or professional fees.

20 MR. JONES: Your Honor, I'll withdraw at
21 this point on this issue.

22 MS. COLEMAN: Your Honor, I would suggest
23 that we simply wait until the end of this week and
24 authorize Scopac to use cash collateral starting today.
25 We will not make any professional fee payments to

1 anybody this week but let's wait until the end of the
2 week. We don't know what's going to happen.

3 THE COURT: Okay. That was my suggestion
4 originally. So go ahead. That's fine. Let's move on.

5 MR. JONES: Your Honor, I apologize.
6 They are permitted to make the interest --

7 THE COURT: Nobody is objecting to that.

8 MR. LITVAK: Correct.

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: Okay. Moving on. We have a
11 witness on the stand ready for cross-examination.

12 MR. BRILLIANT: I am ready, Your Honor.

13 THE COURT: All right. Where is the
14 witness? All right. And as is the custom, even though
15 you're under oath, we just renew the oath each day. So
16 if you will raise your right hand to be sworn.

17 JOSEPH RADECKI,
18 having been first duly sworn, testified as follows:

19 MR. KRUMHOLZ: Your Honor, one
20 housekeeping matter with respect to Mr. Dean's proffer.
21 We had some objections. Are we still caring those?

22 THE COURT: Everything -- I mean, is
23 everybody prepared now about all the exhibits? Are
24 there objections to exhibits?

25 MR. KRUMHOLZ: We are working through

1 those but we're not there yet.

2 THE COURT: Okay. So let me know when
3 we're ready to deal with exhibits. Go ahead.

4 MR. BRILLIANT: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BRILLIANT:

7 Q. Good morning, Mr. Radecki.

8 A. Good morning.

9 Q. Mr. Radecki, you are not an economist, are
10 you?

11 A. I am not.

12 Q. And you do not have an MBA; is that right?

13 A. I do not.

14 Q. You do not have a Ph.D. in economics either,
15 do you?

16 A. I do not.

17 Q. Other than your high school diploma, in fact,
18 the only degree that you have is a bachelor of arts in
19 government from Georgetown; is that right?

20 A. Correct.

21 Q. And you are not a charter financial analyst,
22 are you?

23 A. I am not.

24 Q. And you have not taken any course work or
25 tests towards getting a CFA, have you?

1 A. I have not.

2 Q. Now, you have not publicly published any
3 articles or books on any topic whatsoever, much less any
4 of the topics that are at issue here; isn't that right?

5 A. That's correct.

6 Q. And you have not held any academic positions
7 or titles as professor or adjunct professor; is that
8 right?

9 A. That's correct.

10 Q. And you don't view yourself as an academic, do
11 you?

12 A. I do not.

13 Q. Other than sitting on panels or bankruptcy
14 conferences twice a year, you have not given any
15 speeches or lectures, have you?

16 A. External to the firms I worked at, no.

17 Q. And you're not a market analyst, are you?

18 A. If what you mean is by a market analyst, a
19 research analyst at an investment bank or commercial
20 bank, no.

21 Q. And you've never been a securities analyst;
22 isn't that right?

23 A. I have not.

24 Q. And you have never been an industry analyst;
25 isn't that right?

1 A. Correct.

2 Q. And you've never been a credit analyst; isn't
3 that right?

4 A. That's correct.

5 Q. And you yourself are not and have never been a
6 securities trader, right?

7 A. I have not.

8 Q. And you are not an expert on mortgage backed
9 securities or subprime mortgage securities; isn't that
10 right?

11 A. I'm not.

12 Q. And you're not an expert in real estate
13 markets, correct?

14 A. I'm not.

15 Q. And you're not a certified appraiser or for
16 that matter an appraiser of any kind?

17 A. I'm not.

18 Q. And as you testified on direct examination,
19 you are not an expert on timberlands, right?

20 A. That's correct.

21 Q. And you're not a registered forester?

22 A. I'm not.

23 Q. And you're not a forester of any kind; isn't
24 that right?

25 A. That's correct.

1 Q. And in fact, you have never even toured a
2 commercial timberlands; isn't that correct?

3 A. That's correct.

4 Q. And you've never been a timberland analyst,
5 right?

6 A. That's correct.

7 Q. And you've never been a forest or paper
8 products analyst, right?

9 A. That's correct.

10 Q. And you've never personally represented a
11 timber company, right?

12 A. That's correct.

13 Q. And other than the current proceeding, you've
14 never represented any creditors of a timber company,
15 right?

16 A. I have represented creditors of a company that
17 owned timberlands but that was not their main operation.

18 Q. And in fact, in that situation, it was a very
19 minor part of their operations; isn't that right?

20 A. That's correct.

21 Q. And that was an energy company?

22 A. Correct.

23 Q. And you've never represented a buyer in the
24 purchasing of timberlands, correct?

25 A. I have not.

1 Q. And you've never represented a seller in the
2 sale of timberlands; is that correct?

3 A. That's correct.

4 Q. And you have never previously valued
5 timberlands; isn't that right?

6 A. That's correct.

7 Q. And you didn't value timberlands here either,
8 have you?

9 A. I did not.

10 Q. So it's fair to say that you've never in your
11 professional career ever valued timberlands at all,
12 ever, right?

13 A. That's correct.

14 Q. And you've never calculated the cap rate or
15 the discount rate used for valuing a timberland; isn't
16 that right?

17 A. I have not.

18 Q. And you've never assigned a valuation to a
19 company that operates timberlands as a major part of its
20 business, correct?

21 A. That's correct.

22 Q. And you don't know whether timberland
23 investors view timberlands as an inflation hedge, do
24 you?

25 A. I've heard that some do through research that

1 I've read but I have not spoken to them.

2 Q. So you don't know firsthand how timberland
3 investors view inflation, do you?

4 A. No, I do not.

5 Q. And you don't know how inflation affects the
6 value of timberlands, do you?

7 A. Not personally, no.

8 Q. And I believe you testified on direct that
9 inflation has been increasing over the last year or so;
10 is that right?

11 A. That's correct.

12 Q. Now, you don't know the general modeling
13 process for valuing timberlands, do you?

14 A. Not personally involved, no.

15 Q. And other than seeing some references in
16 research reports, you were generally unaware that almost
17 all timberland appraisers use 50 year models to evaluate
18 timberlands; isn't that right?

19 A. That's correct.

20 Q. And you don't know whether experts who value
21 timberlands use real or nominal discount rates, do you?

22 A. That's correct.

23 Q. And you've never dealt with any timberland
24 consultants; is that right?

25 A. That's correct.

1 Q. And you've never worked for any timber
2 management organizations; isn't that right?

3 A. I have not.

4 Q. And you've never represented any timberland
5 management organizations, correct?

6 A. That's correct.

7 Q. Now, you've not worked with or represented any
8 integrated producers of forest products; isn't that
9 right?

10 A. I have -- I have one minor assignment I did.

11 Q. And what was that?

12 A. I think Alabama Pine and Pulp.

13 Q. Now, that was a pulp and paper company, right?

14 A. That's correct.

15 Q. So you view that as a forest product?

16 A. Yes.

17 Q. And that was a long time ago?

18 A. Several years ago, correct.

19 Q. And that had nothing to do with the issues
20 that are relevant here; isn't that right?

21 A. I don't believe it did.

22 Q. Now, you have no familiarity with GIS data;
23 isn't that right?

24 A. I do not.

25 Q. In fact, when I deposed you on Friday, you

1 didn't even know what GIS data stands for; is that
2 right?

3 A. That's correct.

4 Q. Do you know today?

5 A. I do not.

6 Q. Now, when I deposed you on Friday, you didn't
7 know what a random lathe is; is that right?

8 A. That's correct.

9 Q. Do you know it today?

10 A. I do not.

11 Q. Now, in addition to never having toured an
12 industrial timberlands, you've never even been in a
13 limber mill either; is that right?

14 A. That's correct.

15 Q. And you have no experience with timber harvest
16 rates, right?

17 A. That's correct.

18 Q. And you have never done --

19 MR. KRUMHOLZ: Your Honor, we stipulate
20 he's not a timber expert. I tried to get rid of this
21 line yesterday. Evidently it didn't go over. But he's
22 here for general macro economic issues as an overlay.

23 THE COURT: I understand. I gave you
24 latitude to question him longer than is proper, so I'm
25 going to give him a little latitude if he wants to do

1 this. But we don't have a jury, so go ahead. I got the
2 tenor of your questions, but go ahead.

3 MR. BRILLIANT: You'll see how this all
4 ties in.

5 THE COURT: I understand.

6 Q. (By Mr. Brilliant) And you have no experience
7 with timber harvest rates; isn't that right?

8 A. I do not.

9 Q. And you have never done a timber harvest
10 analyst; isn't that right?

11 A. That's correct.

12 Q. And you have no experience with timber harvest
13 regulations; isn't that right?

14 A. I do not.

15 Q. And you have never been involved with any
16 enterprise whose business was harvesting redwoods; isn't
17 that right?

18 A. That's correct.

19 Q. And you have no familiarity with the
20 regulation of harvesting of redwoods, correct?

21 A. I do not.

22 Q. You've never done any studies on redwood
23 lumber markets, right?

24 A. That's correct.

25 Q. Now, when I deposed you on Friday, you

1 couldn't name for me any one of the top five commercial
2 timberland owner/operators in the United States; isn't
3 that right?

4 A. That's correct.

5 Q. And you didn't know what the affect of the
6 run-up of the Canadian dollar had on timberland
7 valuations in the United States; isn't that right?

8 A. That's correct.

9 Q. And you didn't know the current supply and
10 demand balance for logs in China, right?

11 A. I did not.

12 Q. And you don't know the effect Russian tax
13 policies have on timberland values in the United States;
14 isn't that right?

15 A. I do not.

16 Q. Now, let's turn a little bit to purchasers of
17 timberlands. You don't know what types of entities are
18 the likely purchasers of U.S. timberlands at the current
19 time, do you?

20 A. I do not.

21 Q. And you don't know whether there's been a
22 change in the nature of the purchasers of timberlands,
23 do you?

24 A. I do not.

25 Q. And you have no idea whether the desire of

1 endowment funds, hedge funds, timber companies, timber
2 management organizations, conservation groups has
3 changed with respect to the desire to buy timberlands
4 over the last two years, do you?

5 A. I don't know if there's been a change, no.

6 Q. And you don't know whether the demand for
7 purchasing timberlands has changed over the last two
8 years, do you?

9 A. I do not.

10 Q. Now, when I asked you on Friday, you couldn't
11 name the largest U.S. lender of timberland companies in
12 the United States; is that correct?

13 A. Correct.

14 Q. Do you know today?

15 A. I do not.

16 Q. In fact, on Friday you couldn't name any
17 lender or underwriter who specializes in lending with
18 respect to timberlands; isn't that right?

19 A. I believe that's correct.

20 Q. Can you do that today?

21 A. I cannot.

22 Q. Other than attending general meetings while at
23 Drexel some time in the '80s when the original Palco
24 financing was discussed, of which you cannot recall
25 anything substantive, you've had no professional

1 experience providing financing for timberlands or
2 timberland operators; isn't that right?

3 A. That's correct.

4 Q. Now, other than the small involvement with
5 Alabama Pine and Pulp Company and the mobile energy
6 service matter, the two matters that you mentioned where
7 there were small amounts of timberlands, you've not been
8 involved in any way with companies that own timberlands;
9 isn't that right?

10 A. That's correct.

11 Q. Currently you're self-employed; isn't that
12 right?

13 A. That's correct.

14 Q. And you have no associates or employees at
15 your firm other than yourself; isn't that right?

16 A. I do not.

17 Q. Mr. Radecki, your first contact with any of
18 the creditors of Scopac was when you spoke with Daniel
19 Gropper of Aurelius Capital Management midday on Sunday,
20 June 22nd; isn't that right?

21 A. I believe that's correct.

22 Q. And that was about eight days ago?

23 A. Yes.

24 Q. And Mr. Gropper asked you if you were
25 available to provide an opinion on market positioning

1 over the course of the last 18 months; is that right?

2 A. That's correct.

3 Q. And Mr. Gropper told you that they were
4 looking for someone because they were reluctant to have
5 Houlihan Lokey testify; is that right?

6 A. I don't believe he put it that way, no.

7 Q. I put in front of you a deposition transcript.
8 Can you please turn to page 229, 17-22.

9 A. Say the page number again, please.

10 Q. 229.

11 MR. KRUMHOLZ: Your Honor, the deposition
12 transcript is completely consistent. It's improper
13 impeachment.

14 MR. BRILLIANT: Well, I don't believe so,
15 Your Honor, and I haven't asked my question yet.

16 THE COURT: Okay. Ask it. Well, ask the
17 question.

18 Q. (By Mr. Brilliant) Question: "Okay. And he
19 explained to you when you first spoke to him that" --

20 THE COURT: You first have to ask him a
21 question and he has to answer it different from the way
22 he answered in the question.

23 MR. BRILLIANT: I did ask him a question,
24 Your Honor.

25 THE COURT: Okay. Now, did you ask that

1 very same question in the deposition?

2 MR. BRILLIANT: It's very close, Your
3 Honor.

4 THE COURT: Okay.

5 Q. (By Mr. Brilliant) Question -- Mr. Radecki,
6 at your deposition, did Mr. Fiero ask you this question
7 and did you give this answer. Question: "Okay. He
8 explained to you when you first spoke to him that the
9 Noteholders didn't wish to use Houlihan as their witness
10 on this matter, am I right?" Answer: "He did not
11 explain that, no. Mr. Gropper said that to me on
12 Sunday."

13 A. That's correct.

14 Q. So Mr. Gropper said to you on Sunday -- isn't
15 it correct that Mr. Gropper said to you on Sunday that
16 the Noteholders didn't wish to use Houlihan as their
17 witness on this matter?

18 A. That is correct.

19 Q. Mr. Gropper told that you the creditors would
20 socialize the idea of retaining you and if they were
21 interested, Mr. Strubeck at Fulbright would contact you;
22 is that right?

23 A. That's correct.

24 Q. And then Mr. Strubeck contacted you some time
25 on Monday, June 23rd; is that right?

1 A. I believe so, yes.

2 Q. That was a week ago yesterday?

3 A. Yes.

4 Q. Now, between the time that you spoke with
5 Mr. Gropper on Sunday and when you spoke with
6 Mr. Strubeck on Monday, you did no work or preparation
7 or background or due diligence in connection with this
8 matter that might have been useful in this matter; isn't
9 that right?

10 A. Other than the normal work I do, no.

11 Q. Now, when you first spoke with Mr. Strubeck on
12 Monday, you spoke to him between meetings while you were
13 in Denver in connection with another matter; is that
14 correct?

15 A. That's correct.

16 Q. And during your initial conversation with
17 Mr. Strubeck on Monday you discussed the nature of the
18 opinions that Mr. Strubeck wanted you to testify about
19 at this hearing; isn't that right?

20 A. That's correct.

21 Q. And the initial conversation with Mr. Strubeck
22 lasted just a few minutes; isn't that right?

23 A. Yes, I believe so.

24 Q. And after the first call with Mr. Strubeck and
25 before you did any diligence at all, the Indenture

1 Trustee added your name to the witness list; isn't that
2 right?

3 A. I don't know when the Indenture Trustee added
4 my name to the witness list.

5 Q. So you don't recall whether the Indenture
6 Trustee added your name to the witness list on Monday?

7 A. I don't know.

8 Q. And on that Monday, you had another
9 conversation with Mr. Strubeck; is that right?

10 A. Yes.

11 Q. And that conversation lasted about ten
12 minutes; is that right?

13 A. I believe so, yes.

14 Q. And given that you were traveling,
15 Mr. Strubeck volunteered to send you documents; is that
16 right?

17 A. He said he would send me some documents. I'm
18 not sure whether it had to do with my travel or not, but
19 he said he would send me some documents.

20 Q. And in fact, he did send you several e-mails;
21 isn't that right?

22 A. That's correct.

23 Q. And he attached various documents to that; is
24 that right?

25 A. Correct.

1 Q. And you know, generally law firms don't have
2 access to financial analyst reports and financial
3 information; isn't that right?

4 A. I have no idea what law firms have access to.

5 MR. KRUMHOLZ: Objection, calls for
6 speculation as to where Mr. Strubeck got the documents.

7 THE COURT: He said he didn't know
8 anyway, so let's move on.

9 Q. (By Mr. Brilliant) But you don't know where
10 the documents that Mr. Strubeck sent you came from, do
11 you?

12 A. I have no idea.

13 Q. And you never asked him where the documents
14 came from, did you?

15 A. No, I did not.

16 Q. And it's possible they came from Houlihan,
17 right?

18 A. Possible they came from anywhere.

19 Q. But you never asked?

20 A. I have no idea. No, I did not ask. I thought
21 I had answered that.

22 Q. And on Monday you also called Micah Henfield
23 who used to work for you at Piper Jaffray; is that
24 right?

25 A. That's correct.

1 Q. And you asked her to get you analyst reports
2 on the credit crisis; is that correct?

3 A. That's correct.

4 Q. And Ms. Henfield sent you some analyst
5 reports, right?

6 A. She did.

7 Q. And after having two ten-minute phone calls
8 with Mr. Strubeck and one with Ms. Henfield on Monday,
9 you reviewed documents in your hotel room for a couple
10 of hours on Monday; is that right?

11 A. That's correct.

12 Q. And then you stayed in Denver until late
13 Tuesday afternoon; is that right?

14 A. That's correct.

15 Q. And while you were in Denver you had meetings
16 in connection with other matter; is that right?

17 A. I did.

18 Q. And those meetings lasted from about 8 a.m. to
19 3 p.m.?

20 A. Approximately, yes.

21 Q. And then after those meetings you flew to New
22 York; is that right?

23 A. That's correct.

24 Q. And you returned to your home in Connecticut
25 on Tuesday evening, right?

1 A. I arrived there early, early Wednesday
2 morning.

3 Q. Now, on Tuesday during a break in your meeting
4 you spoke with Mr. Strubeck again for no more than ten
5 minutes; is that right?

6 A. I believe so, yes.

7 Q. And you also called Ms. Henfield again and
8 asked her to get you additional documents on building
9 product companies; is that right?

10 A. That's correct.

11 Q. And on Tuesday night while you were on the
12 plane, you reviewed some documents that you downloaded
13 on your computer until your computer battery ran low; is
14 that right?

15 A. That's correct.

16 Q. And that was about two hours?

17 A. A couple hours worth, yes.

18 Q. And on Tuesday after your plane landed in New
19 York around midnight, you had about a half hour
20 conversation with Mr. Strubeck on the way back from the
21 airport; is that right?

22 A. I believe that's correct.

23 Q. In that conversation, you reviewed the
24 language underlying the summary of your opinions with
25 Mr. Strubeck; is that right?

1 A. I did.

2 Q. And your opinion that the value of timberlands
3 generally has declined during the bankruptcy period was
4 based on the review of documents that occurred on Monday
5 and Tuesday of last week for approximately two hours
6 each day and your general knowledge; is that right?

7 A. That's correct.

8 Q. And it's not based on anything else that you
9 can delineate, right?

10 A. That's correct.

11 Q. In fact, you did not create any spreadsheets;
12 isn't that right?

13 A. I did not.

14 Q. And you didn't do any written analysis in
15 connection with formulating your opinions in this case,
16 did you?

17 A. I did not.

18 Q. And in fact, you did not take any notes on any
19 of the analyst reports you reviewed; isn't that right?

20 A. No, I did not.

21 Q. And you didn't write any summaries, you know,
22 down on paper of -- from your review of the analyst
23 reports, did you?

24 A. I did not need to, no.

25 Q. Now, you produced documents in connection with

1 this case, didn't you?

2 A. I did.

3 Q. And you knew that you had to produce documents
4 that you relied on in connection with formulating your
5 opinions, right?

6 A. Correct.

7 Q. And all the documents that you produced, you
8 procured either from Mr. Strubeck or Ms. Henfield; isn't
9 that right?

10 A. That's correct.

11 Q. And every -- and you didn't find any document
12 yourself that you relied on other than what you got from
13 Mr. Strubeck or Ms. Henfield, correct?

14 A. Several of the documents that I had reviewed I
15 had Ms. Henfield send to me, but -- so I don't know
16 whether I produced them or if she produced them, but
17 ultimately the e-mails came from her.

18 Q. Now, you haven't been provided any business
19 information about Scopac other than Fulbright having
20 told you that Scopac sells all of its logs to Palco; is
21 that right?

22 A. I have not.

23 Q. And you don't know anything about Scopac's
24 revenues, right?

25 A. I do not.

1 Q. And you don't know anything about Scopac's
2 harvest rate, do you?

3 A. I do not.

4 Q. And you don't know anything about Scopac's log
5 price assumptions, do you?

6 A. I do not.

7 Q. And you don't know about Scopac's cost and
8 expenses, do you?

9 A. I do not.

10 Q. And you've never seen any financial
11 projections for Scopac, have you?

12 A. I have not.

13 Q. Have you reviewed any valuations of the Scopac
14 timberlands?

15 A. I have not.

16 Q. And you've not reviewed the disclosure
17 statement, correct?

18 A. I have not.

19 Q. And you've done no formal valuation in
20 connection with your work, correct?

21 A. I was not asked to opine on that.

22 Q. And you didn't?

23 A. I did not.

24 Q. And you didn't do any analysis on that issue?

25 A. I did not.

1 Q. In doing your analysis, you haven't reviewed
2 any analyst reports that dealt with redwood timberlands,
3 did you?

4 A. I did not.

5 Q. And you didn't look at any analyst reports
6 that referenced California timberlands, did you?

7 A. Not that I can recall.

8 Q. And in fact, when I deposed you on Friday, you
9 didn't recall whether you looked at any analyst reports
10 that dealt specifically with timber companies, correct?

11 A. I couldn't recall on Friday, no.

12 Q. Now, you have no opinion as to the value of
13 Scopac's timberlands on January 18th, 2007, correct?

14 A. Direct value, no.

15 Q. And you have no opinion as to the value of
16 Scopac's timberlands as of June 6, 2008, correct?

17 A. Numerical value, no.

18 Q. And you have no opinion as to whether Scopac's
19 timberlands have diminished in value, right?

20 A. I do have an opinion generally as to
21 timberlands. As to Scopac's timberlands, no, directly,
22 no.

23 Q. And you have no direct opinion as to the value
24 of Scopac's timberlands at any point in time at all,
25 correct?

1 A. That's correct.

2 Q. Now, your opinion is that macro economic
3 factors have affected timberlands as an asset class,
4 right?

5 A. I would say macro economic factors as opposed
6 to micro economic factors.

7 Q. Thank you. But your opinion is that macro
8 economic factors have affected timberlands as an asset
9 class, right?

10 A. That's correct.

11 Q. But prior to rendering your opinion on
12 Wednesday, you did no work to determine if there are any
13 publicly traded securities for companies that are
14 comparable to Scopac to see whether the stock price and
15 comps have gone down; isn't that right?

16 A. That's correct.

17 Q. When I deposed you on Friday, you were not
18 aware of any stock indices or timberland indices that
19 are kept by third parties to show the relative changes
20 in timberlands; isn't that right?

21 A. That's correct.

22 Q. Now, you agree with me, don't you, that if
23 macro economic factors associated in the economy had
24 adversely affected the class of assets related to
25 timberlands generally, then the equity prices as a whole

1 in that asset class would have gone down; isn't that
2 right?

3 A. If there were pure comps, correct, in a
4 perfect world.

5 Q. But your view is that as a general matter, the
6 timberland's prices have gone down, right?

7 A. That's correct.

8 Q. So if you add up, take an indices of all of
9 the comps you would expect if they were good comps that
10 they would have gone down, right?

11 A. If they were good comps, yes.

12 Q. Now, when I --

13 A. I should amend that. If they were good comps
14 and the indices is properly constructed.

15 Q. So when I deposed you on Friday, you had not
16 looked at any indices of timberlands, correct?

17 A. I had not.

18 Q. And you hadn't even looked to see whether
19 there were any indices out there that you could look at;
20 isn't that right?

21 A. I had not.

22 Q. Now, Fulbright sent you some data on
23 individual companies; isn't that right?

24 A. They did.

25 Q. And what they sent you was a beta data for

1 four entities; isn't that right?

2 A. Correct.

3 Q. And beta -- tell the Court what beta is.

4 A. Beta is a measure of volatility on any given
5 asset or stock.

6 Q. And what does volatility mean?

7 A. Volatility is the manner in which a given
8 asset class will change in value up or down for the
9 purposes of this.

10 Q. And you did not request the beta data, did
11 you?

12 A. No, I did not.

13 Q. And you thought that the companies for the
14 information they sent you were comparable in some ways;
15 isn't that right?

16 A. I believe they all own some amount of timber.

17 Q. But you did no analysis to determine how
18 comparable they were; isn't that right?

19 A. That's correct.

20 Q. And no one told you that these four companies
21 were Houlihan's comparable companies; isn't that right?

22 A. No one told me that.

23 Q. Are you aware today whether they are?

24 A. I am not aware.

25 Q. I show you what is MMX -- Exhibit MMX 162,

1 which is a table from the Houlihan Lokey report which
2 lists Plum Creek timber company, Rayonier, Pope
3 Resources and Potlatch as comparable companies for a
4 comparable company market multiple analysis detail. You
5 have never seen this before, have you?

6 A. I have not.

7 Q. Now, you are not aware of any more comparable
8 companies to Scopac than Plum Creek, Rayonier, Potlatch
9 and Pope Resources, are you?

10 A. I would say I'm not aware of any more
11 comparable companies, caveating that with I'm not sure
12 that these are comparable either.

13 Q. Now, when I deposed you on Friday, you said
14 that you looked at some graphs at some individual timber
15 stocks, right?

16 A. I did.

17 Q. But when I deposed you on Friday, you could
18 not recall any timber stocks that had gone down during
19 the bankruptcy period, right?

20 A. That's correct.

21 Q. Now, at your deposition I told you about the
22 S&P global timber and forestry index, right?

23 A. Yes.

24 Q. Now, if your thesis is right that economic
25 forces have caused a decline in all asset classes during

1 the bankruptcy period, you know, including timberlands,
2 then it's an index measured only timberlands, you would
3 expect it to go down, correct?

4 A. If it measured only pure timberlands, correct.

5 Q. Now, when I showed you -- I showed you the S&P
6 global timber and forestry index on Friday, right?

7 A. I believe you showed me a chart of it, yes.

8 Q. Yeah. And that chart showed that during the
9 bankruptcy period the stocks in that timber index went
10 up; isn't that right?

11 A. I can't recall what the index showed on
12 Friday.

13 Q. Go to the next one. I show you what --

14 MR. KRUMHOLZ: Your Honor, I think this
15 is hearsay. And I think you discussed it yesterday that
16 indices and analyst reports and things of that nature, I
17 thought you indicated it was not going to be allowed.

18 MR. BRILLIANT: This is an expert.

19 THE COURT: He's an expert and he's
20 testifying about these. These charts, I think, are
21 charts that are taken from reliable sources. If they're
22 not then -- and so I think you can ask questions about
23 experts to test his knowledge about these, so go ahead.

24 MR. BRILLIANT: Thank you, Your Honor.

25 Q. (By Mr. Brilliant) I show you what's been

1 marked as Exhibit MMX 193. Does this refresh your
2 recollection as to whether during the bankruptcy period
3 the S&P global timber and forestry index went up or
4 down?

5 A. This index shows that it went -- this
6 particular stock chart shows that the index went up.

7 Q. And given your review that the entire asset
8 class of timberlands went down during the bankruptcy
9 period, did this surprise you?

10 A. Not particularly, no.

11 Q. And it doesn't change your view, does it?

12 A. It does not.

13 Q. I also showed you stock prices for Plum Creek
14 at your deposition; isn't that right?

15 A. You did.

16 Q. And during the bankruptcy period from 1/18/07
17 through June 6 when the Court ruled on valuation, the
18 stock price of Plum Creek had gone up as well, hadn't
19 it?

20 A. That's correct.

21 Q. And I showed you a stock price chart at your
22 deposition of Rayonier, didn't I?

23 A. I believe you did.

24 Q. And the stock price for Rayonier during the
25 pendency of the bankruptcy case had gone up, hadn't it?

1 A. I believe that's correct.

2 Q. And I showed you a stock price chart for
3 Potlatch, one of the other Houlihan comps during your
4 deposition, didn't I?

5 A. I believe you did.

6 Q. And during the bankruptcy period, that one
7 went up as well, didn't it?

8 A. I believe it did.

9 Q. Now, at your deposition I asked you if you
10 knew what NCREIF was and you told me you did not; is
11 that right?

12 A. I did not.

13 Q. Do you know today?

14 A. I mean, I have read about it but I haven't
15 really analyzed it.

16 Q. But you know what it is today, right?

17 A. Yeah.

18 Q. What is NCREIF?

19 A. It is, among other things, an organization
20 that among many tasks that they perform, one of the
21 things they take a look at is REITs, timberlands and
22 other real estate related asset classes.

23 Q. And they take a quarterly appraisal of a wide
24 number of timberland properties and they aggregate them
25 into an index; isn't that right?

1 A. I know they have an index. I don't know what
2 frequency it's done at.

3 Q. But you know that they create the index
4 through appraisals; isn't that right?

5 A. I've heard that, yes.

6 Q. And prior to your deposition and rendering
7 your opinion that the entire asset class went down, you
8 never looked at the NCREIF index, did you?

9 A. I did not.

10 Q. And you made no effort to talk to industry
11 analysts or other parties to find out if such an index
12 existed, did you?

13 A. I did not.

14 Q. Now, do you recall from -- do you know whether
15 the NCREIF index has gone up or gone down during the
16 bankruptcy period?

17 A. I don't recall.

18 Q. I show you --

19 MR. KRUMHOLZ: Your Honor, what document
20 is this from?

21 MR. BRILLIANT: This is MMX 193 and it's
22 page 12.

23 MR. KRUMHOLZ: What's the document
24 though?

25 MR. BRILLIANT: This is the NCREIF

1 timberland returns.

2 MR. KRUMHOLZ: I'm going to object to
3 this document, Your Honor. This is not -- I don't
4 believe this is a reliable source. It's a survey, it's
5 a sales document, I believe. It's not a reliable
6 source. It's not authoritative. It's not established
7 to be authoritative and I object as hearsay.

8 MR. BRILLIANT: Your Honor, this is a
9 document compiled by the James Sewall company. It was
10 used in a speech just less than a month ago in
11 connection with their view of the valuation of
12 timberlands generally in the United States of America.

13 THE COURT: A speech by who?

14 MR. BRILLIANT: A speech by Mr. Brett
15 Vickery of the James W. Sewall company, which is the
16 largest consulting firm --

17 THE COURT: Haven't we already seen this
18 document? This is the second time it's been put up.

19 MR. KRUMHOLZ: Your Honor, just to give
20 you a little bit of context that Mr. Brilliant is not
21 mentioning, Mr. Vickery is the unsecured creditor's
22 committee retained consulting expert and actually was
23 preparing this in the courtroom during the confirmation
24 hearing for a speech shortly thereafter. That's what's
25 going on here. And that's a sales pitch. They're

1 trying to sell services to potential buyers in the
2 timberland industry. It's an unfair -- it's never been
3 shown to anybody for purposes of authentication, for
4 purposes of authority or anything else.

5 THE COURT: Are you going to prove it up
6 by your experts?

7 MR. BRILLIANT: Mr. LaMont will testify
8 about this document, Your Honor. But all I'm doing at
9 this point is asking an expert witness whether or not
10 he's familiar with the NCREIF timberland returns.
11 Mr. Sewall did make the chart but the NCREIF returns are
12 available to anybody who is an expert in the timberland
13 industry or any financial analyst who pays NCREIF for
14 use of their financial information.

15 THE COURT: I'm not going to admit at
16 this time this chart but you can ask him about NCREIF.

17 MR. BRILLIANT: Thank you, Your Honor.

18 MR. KRUMHOLZ: Your Honor, I just don't
19 want any questions about a chart that hasn't been
20 authenticated. It's been --

21 THE COURT: I understand. You're going
22 to have to either tie this chart up or I'm not going to
23 consider anything about this chart. Now, you can ask
24 him questions and then get it tied up at a later time.
25 Let's move on.

1 MR. BRILLIANT: Thank you, Your Honor.

2 Q. (By Mr. Brilliant) You see the -- I'm showing
3 you what's been marked -- what is the NCREIF timberland
4 report from the Sewall report.

5 MR. KRUMHOLZ: Your Honor, I just want
6 clarification here. You're letting him ask about this
7 chart? You're not admitting it?

8 THE COURT: Well, I'm not sure what his
9 questions are. I'm not allowing him to -- I understand
10 that there is some service called NCREIF; is that
11 correct?

12 MR. BRILLIANT: Yes, Your Honor.

13 THE COURT: Does everyone agree to that?
14 That's good -- do we know? Do you know?

15 THE WITNESS: There is an organization
16 called NCREIF.

17 THE COURT: So is this the only chart of
18 the NCREIF information that you have?

19 MR. BRILLIANT: No.

20 THE COURT: I mean, is there a location
21 of NCREIF?

22 MR. KRUMHOLZ: It is a consulting expert
23 at this table. I don't trust this chart at all.

24 THE COURT: Okay. And I'm not suggesting
25 that it's the right chart.

1 MR. KRUMHOLZ: I ask that it be taken off
2 the screen until it's proven up.

3 THE COURT: Well, we're not going to get
4 tied into calling some witness that's coming later to
5 tie up a chart.

6 MR. KRUMHOLZ: It's not going to be tied
7 up.

8 THE COURT: If it's not tied up, I'm not
9 going to consider the chart.

10 MR. KRUMHOLZ: It's not going to be tied
11 up later or at any time in this trial. You already
12 ruled, Your Honor, in fairness, yesterday as to what you
13 thought Mr. LaMont and others --

14 THE COURT: Well, what I ruled yesterday
15 was that they could not use a non-expert witness, bring
16 in publications about -- now, this is an expert witness
17 and he is testifying about macro economic things, you
18 know, forces on the market.

19 MR. KRUMHOLZ: I can draw a chart right
20 here, Your Honor, I can draw on my pad. It's totally
21 reliable.

22 THE COURT: You can do that. We do that
23 all the time. We draw charts and experts ask about them
24 and you know -- I agree with you.

25 MR. KRUMHOLZ: I understand. I'm going

1 to object to this chart at all to be used as that basis,
2 whatever the ruling.

3 THE COURT: Okay. All right. It's not
4 admitted.

5 MR. KRUMHOLZ: Can I get a running
6 objection to this chart?

7 THE COURT: Sure.

8 MR. KRUMHOLZ: Can I take this witness on
9 voir dire? It's an authentication.

10 MR. NEIER: It's his witness.

11 THE COURT: And you're going to get a
12 chance to redirect him.

13 MR. KRUMHOLZ: All right.

14 MR. BRILLIANT: Why don't you take that
15 down.

16 MR. KRUMHOLZ: Why don't you just have
17 Mr. Sewall testify.

18 MR. FIERO: He's in Alaska.

19 Q. (By Mr. Brilliant) Now, Mr. Radecki, since
20 your deposition, have you done -- have you been on the
21 NCREIF website to look at their timberland index?

22 A. I have not.

23 Q. And do you know what NCREIF stands for?

24 A. I read it, but I don't recall.

25 Q. Let me ask you a hypothetical question. If

1 NCREIF accurately calculates an index, the value of
2 timberlands in the country and they do it over a period
3 of time and it's a representative sample of the asset
4 class generally and the asset class has increased in
5 value during the bankruptcy period, does that -- would
6 that be consistent or inconsistent with your opinion
7 that the asset class as whole has gone down during the
8 bankruptcy period?

9 A. If they have accurately calculated, that would
10 be inconsistent.

11 Q. Now, in formulating your opinion, do you think
12 it would have been worthwhile to have tried to determine
13 whether or not there were timberland indexes?

14 A. No, not -- not necessarily.

15 Q. And as you testified earlier, you made no
16 effort to see if there were any indexes; isn't that
17 right?

18 A. I did not.

19 Q. Now, I'm going to represent to you -- I'm
20 going to represent to you that this is the NCREIF
21 timberland index scaled at 100 prepared by -- off of
22 NCREIF, you know, Internet database. If this is the
23 trend of timberlands generally, would this be consistent
24 or inconsistent with your opinions?

25 MR. KRUMHOLZ: Your Honor, I'll just

1 object on the same basis. It's hearsay and I've never
2 seen this document before today.

3 THE COURT: Well, I mean, now we're
4 talking about a document that's just a compilation of
5 some NCREIF index. If in fact this is not a valid -- if
6 it's not a valid compilation of NCREIF and he's invented
7 this document and then he's committing fraud on the
8 Court, he's subjecting himself to losing his license,
9 all sorts of other things. This sounds as though this
10 is a service that's normally done in the ordinary
11 course, not done in preparation for trial in this case.
12 Here's an expert witness. He can look at it. He can
13 tell us if it means anything. Let's go on.

14 Q. (By Mr. Brilliant) Sir, do you remember the
15 question?

16 A. Could you repeat it, please?

17 MR. BRILLIANT: Can you read back the
18 question, please.

19 THE COURT: No. You need to ask another
20 question.

21 Q. (By Mr. Brilliant) All right. If this is --
22 if this NCREIF timberland index is a compilation of
23 timberland values and is properly done, would this graph
24 be consistent or inconsistent with your opinions?

25 MR. KRUMHOLZ: Same objections, Your

1 Honor.

2 THE COURT: Overruled.

3 A. Not necessarily consistent or inconsistent as
4 it doesn't contain, as I can see the period from the
5 entire bankruptcy period. It has most but not all.

6 Q. So it's possible in your view that, you know,
7 that values may have come down starting in December '07
8 and gotten to be below where they were at the beginning
9 of the bankruptcy?

10 A. I don't know. Again, because I don't know
11 where the appraisal data from this is coming from.

12 Q. And you've never seen this chart before; is
13 that right?

14 A. I haven't.

15 Q. Now, it's your view that even though the S&P
16 index went up, Potlatch stock went up, Rayonier went up,
17 Plum Creek went up, that during the bankruptcy period
18 timberlands generally have diminished in value; is that
19 right?

20 A. That's correct.

21 Q. Now, the Dow Jones industrial average, the S&P
22 reached their all time highs in mid October of 2007; is
23 that correct?

24 A. I don't know about all time high, they were at
25 a high at that particular juncture, correct.

1 Q. Now, in your proffer you state the value of
2 assets, particularly those which generate relatively low
3 present earnings such as timberlands dropped
4 precipitously beginning in the middle of 2007; is that
5 right?

6 A. That's correct.

7 Q. Now, when you say "the middle of 2007," what
8 specific month are you talking about?

9 A. August we started to see some severe cracks in
10 the credit market and which led to assets that didn't
11 produce cash flow to becoming suddenly illiquid and
12 unfinanceable.

13 Q. So you're saying in August you started to see
14 some cracks but when did the value of assets start to
15 drop?

16 A. Shortly thereafter.

17 Q. And when you say "shortly thereafter," would
18 that be October?

19 A. It's impossible to say for all asset classes
20 or all assets across the board when each individual
21 asset began to drop but there was a general recognition
22 in the marketplace that assets were becoming devalued
23 because suddenly financing was either unavailable or
24 much more expensive than it had been in the past.

25 Q. But you agree with me that the Dow Jones

1 industrial average and the S&P 500 reached highs in
2 October; is that right?

3 A. That's correct. Equities lag the rest of the
4 marketplace, as is normal.

5 Q. Now, you've done no specific analysis as to
6 the effect on timberlands, you know, of these cracks in
7 the market that you're talking about, have you?

8 A. No, none specifically.

9 Q. And so you don't know when, if at all,
10 timberland prices started to drop, do you?

11 A. I do not.

12 Q. Now, do you know whether they started to drop
13 prior to October or later than October?

14 A. I do not.

15 Q. Now, prior to the decline that you're opining
16 on, many assets, I'm not talking about timberlands now
17 but many assets generally had a large run-up in value;
18 is that right?

19 A. Prior to the period I'm opining on?

20 Q. Prior to the decline that you were opining on.

21 A. Correct.

22 Q. Assets ran up, right?

23 A. Asset values have been increasingly frothy
24 over the last couple of years, correct.

25 Q. Is it possible that timberland assets ran up

1 in value prior to this decline that you're saying that,
2 you know, started in August or some time after August
3 because of lack of financing available in the
4 marketplace?

5 A. It's possible.

6 Q. Have you done any analysis to determine
7 whether timberland assets ran up prior to that?

8 A. No, I do not.

9 Q. Now, not every company in the Dow Jones
10 industrial average has declined in value during the
11 bankruptcy period; isn't that right?

12 A. No, companies will follow their own path.

13 Q. And not every asset class is diminished,
14 right?

15 A. Not every single asset class, correct.

16 Q. Certain commodity asset classes are actually
17 up; isn't that right?

18 A. We're seeing energy up, we're seeing gold and
19 certain metals up. We're seeing certain segments or
20 niches of the healthcare industry up, primarily
21 technology related.

22 Q. And are there other asset classes that may be
23 up as well?

24 A. There may be. I'm not aware of them.

25 Q. But you've done no analysis to determine

1 whether there are any other asset classes that are
2 actually up as well; isn't that right?

3 A. I'm not sure what you mean by analysis. I'm
4 constantly in the marketplace in a number of different
5 industries and reading about others, so I'm not sure
6 what you mean by analysis. I follow other industries.

7 Q. But you don't follow all industries, do you?

8 A. I don't follow every single industry, no.

9 Q. And prior to this matter, you didn't follow
10 the timberland industry, right?

11 A. That's correct.

12 Q. And I take it there are industries, you know,
13 today that you've had no experience with; isn't that
14 right?

15 A. I'm sure there are.

16 Q. And there's industries that you don't read
17 about on any regular basis; isn't that right?

18 A. I'm sure there are.

19 Q. So there could be industries that are -- or
20 asset classes that are increasing in value that your are
21 not aware of, right?

22 A. I'm sure there could be.

23 Q. Now, you testified earlier you're not aware of
24 whether or not perspective purchasers of timberlands
25 view that timberlands are an inflation hedge; is that

1 right?

2 A. That's correct.

3 Q. And if perspective investors in timberlands
4 view timberlands as an inflation hedge, is it possible
5 that timberland values have increased during the
6 bankruptcy period?

7 A. On that one fact alone, not necessarily.

8 Q. Now, you have no specific knowledge as to
9 whether or not during the bankruptcy period timberland
10 values have gone down commensurately with other asset
11 classes; isn't that right?

12 A. Commensurately, no.

13 Q. And you did no research to confirm that
14 timberlands are correlated with any other asset class;
15 isn't that right?

16 A. No.

17 Q. And what do you understand a correlation
18 coefficient to be?

19 A. Correlation coefficient is a mathematical
20 measurement of how correlated one numerical value is to
21 another and how they move in tandem.

22 Q. And why would somebody want to calculate a
23 correlation coefficient?

24 A. For any number of financial purposes,
25 including hedging as to whether or not the two values

1 are going to move in tandem or move opposite of each
2 other.

3 Q. So a -- when we say something is correlated,
4 if -- you know, if a particular asset was correlated to
5 a bond price and they had perfect correlation, do you
6 know the term perfect correlation?

7 A. I do.

8 Q. What does that mean?

9 A. That would mean they would move exactly the
10 same at all times, in the same direction.

11 Q. Okay. So if we have two assets, we have asset
12 X and we have bond prices. And if they're perfectly
13 correlated and bond prices went up, what would happen
14 with the asset?

15 A. The asset price if they were perfectly
16 correlated would go up by the same percentage.

17 Q. And if they were uncorrelated and the bond
18 price went up, what would happen with the -- with the
19 asset?

20 A. They would move in opposite directions.

21 Q. Or if it's not correlated, nothing may happen
22 to it, it may go up, it may go down?

23 A. Correct. Uncorrelated, I'm sorry I misspoke.
24 I thought you meant negatively correlated. Uncorrelated
25 would be it could move in any direction.

1 Q. Uncorrelated means there's no relationship?

2 A. That's correct.

3 Q. There's just no numerical or mathematical
4 relationship between the two assets?

5 A. That's correct.

6 Q. So effectively in your opinion when you say
7 that all asset classes like timberlands have diminished
8 in value, you're effectively saying they're all
9 correlated to these macro economic factors in some way;
10 is that right?

11 A. Yeah, I'm saying there is some correlation for
12 all these classes minus the ones I just exempted.

13 Q. Now, different asset classes are going to be
14 correlated differently to these macro economic factors
15 that are occurring in the economy; isn't that right?

16 A. Of course.

17 Q. And although asset values may have gone down
18 generally for certain types of assets, they all didn't
19 necessarily go down the same amount; isn't that right?

20 A. That's correct.

21 Q. And you have no views as to what percentage or
22 there might have been in declines for timberlands; isn't
23 that right?

24 A. Direct views, no.

25 Q. Now, in the general part of your professional

1 practice, you've never calculated correlation
2 coefficients; isn't that right?

3 A. Not directly, no.

4 Q. It's just not something you usually do, right?

5 A. It's not something I need to do because
6 there's many services out there that do it for you.

7 Q. And so if you wanted to know about
8 correlations, you could go and look at one of these
9 services and determine what the correlations are; is
10 that right?

11 A. You could absolutely go to a Thompson or a
12 Bloomberg terminal and put in the various indices and it
13 will give you a correlation.

14 Q. In doing your analysis here, you never checked
15 to see if timberlands are correlated with any type of
16 financial instrument, did you?

17 A. I did not.

18 Q. You didn't check to see whether they were
19 correlated with the S&P 500, right?

20 A. I did not.

21 Q. And you didn't check to see whether they were
22 correlated with the Dow Jones industrial average; is
23 that right?

24 A. I did not.

25 Q. And you didn't check to see whether there was

1 a correlation between timberlands and the Citigroup
2 three-month T-bill, right?

3 A. I did not.

4 Q. And you never checked to see if there was a
5 correlation between timberlands and the Lehman U.S.
6 Aggregate Bond Index; isn't that right?

7 A. I did not.

8 Q. And you made no effort to determine whether
9 correlations on any of these or other instruments had
10 been calculated by anybody else as they relate to
11 timberlands; isn't that right?

12 A. That's correct.

13 Q. Now, are you aware whether Standard & Poor's
14 has calculated the correlation coefficients between the
15 NCREIF timberland index and the S&P 500, Citigroup
16 three-month T-bill and the Lehman U.S. Aggregate Bond
17 Fund?

18 A. I am.

19 Q. And how did you become aware of that?

20 A. I was given a document yesterday by counsel
21 that was potentially being produced as an exhibit and I
22 read through it.

23 Q. So prior to us putting on our exhibit list,
24 the Standard & Poor's calculation of correlations, you
25 were not aware of calculations; isn't that right?

1 A. I was not.

2 Q. So when you rendered your opinion here, you
3 were not aware of the correlation coefficients; isn't
4 that right?

5 A. That's correct.

6 Q. I show you what's been marked as Exhibit 208,
7 page 7.

8 MR. KRUMHOLZ: Is that the Standard &
9 Poor document?

10 MR. BRILLIANT: Yes.

11 Q. (By Mr. Brilliant) Is this the Standard &
12 Poor document that you reviewed from the witness list?

13 A. I believe that's a page of it, yes.

14 MR. KRUMHOLZ: Your Honor, can the
15 witness have a full copy of that in front of him.

16 THE COURT: Is it in your documents?

17 MR. BRILLIANT: It is, Your Honor, it's
18 Exhibit 209.

19 THE COURT: Can he find it? Where is
20 209? Is it one of these five, four folders that I have
21 over here or one of those over there? Or do you have a
22 copy of it?

23 MR. BRILLIANT: May I approach, Your
24 Honor?

25 THE COURT: You may.

1 Q. (By Mr. Brilliant) Mr. Radecki, I show you
2 what's been marked as MMX 209. Have you ever seen this
3 document before?

4 A. I have.

5 Q. This is the document that is part of our
6 exhibit list that you said you reviewed yesterday?

7 A. Yes.

8 Q. This is a report from Standard & Poor's from
9 August 2007?

10 A. Yes.

11 Q. And this calculates certain correlation
12 coefficients between timber and other assets; is that
13 right?

14 A. In a number of areas of the report, it does.

15 Q. I ask you to turn to page 7.

16 A. Okay.

17 Q. Now, the third line in Exhibit 4 with respect
18 to NCREIF timberlands as it relates to S&P 500. What is
19 the correlation that S&P calculated?

20 A. .07.

21 Q. Now, that's a very low correlation, isn't it?

22 A. That's correct.

23 Q. And the NCREIF timberlands correlation with
24 respect to the Lehman U.S. Aggregate Bond Index was .11;
25 is that right?

1 A. That's correct.

2 Q. That's an incredibly low correlation as well;
3 isn't that right?

4 A. I would say low. I don't know what incredible
5 means. But it is low.

6 Q. Well, it's -- you know, if 1 is a perfect
7 correlation and, you know, it's just 10 percent
8 correlated, isn't that right, 11 percent correlated?

9 A. That's correct.

10 Q. That's not very high relatively, is it?

11 A. It's not high.

12 Q. And with respect to Citigroup three-month
13 T-bill and the NCREIF timberland, the correlation is
14 .23; is that right?

15 A. That's correct.

16 Q. That's not very correlated either, is it?

17 A. That's correct.

18 Q. And before we leave this document, can you
19 turn to page 5, please.

20 A. Yes.

21 Q. In the third paragraph in risk/return profile,
22 it says "in addition to higher returns with lower
23 volatility, timber and forestry assets -- I'm sorry,
24 addition to higher returns and lower volatility, timber
25 and forestry assets have low correlation with other

1 asset classes." Do you see that?

2 A. That's correct.

3 Q. Do you agree with that?

4 A. I'm not sure. It doesn't name a time period.

5 Correlation is a measure of relationship over time.

6 That's a blanket sentence with no particular time

7 period. I think frankly you could make -- depending on

8 the length of the time period, you could make that same

9 statement about many asset classes.

10 Q. But you don't know whether that's true because

11 you've done no research on timber and forestry assets,

12 so you don't know how they're correlated to other asset

13 classes; isn't that right?

14 A. Other than what I've read, no.

15 Q. And you've read nothing that specifically

16 talks about the -- other than -- other than this and the

17 discussions we've had at your deposition, you've not

18 read anything that talks specifically about the

19 correlations of timberlands to other asset classes;

20 isn't that right?

21 A. Other than the rest of this report where other

22 correlations, calculations are done, no.

23 Q. Now, one of the other documents that we

24 produced was a calculation of correlations of return by

25 the Campbell Group. Did you review that yesterday as

1 well?

2 A. I did see a document by the Campbell Group,
3 yes.

4 MR. BRILLIANT: Do we have another copy
5 for the witness?

6 MR. HAIL: I don't.

7 Q. (By Mr. Brilliant) And that's this document
8 here, Exhibit 208?

9 A. That looks like the start of it. We'll make
10 the assumption, I guess, that that is the document.

11 Q. Now, on page 2 there is a chart of correlation
12 of selected asset class indices to the NCREIF timberland
13 index 1987 to 2007; is that correct?

14 A. Yeah.

15 Q. And did you review this over the last 24
16 hours?

17 A. I have.

18 Q. And it's true, isn't it, that with respect to
19 this chart, it shows that the asset class of timberlands
20 represented by the NCREIF timberland index is not
21 particularly correlated to any of these specific asset
22 classes that they calculated here; isn't that right?

23 A. Again, over a 20-year period, that is likely
24 to be true for many asset classes, correct.

25 Q. But I'm just asking you -- but it's correct

1 with respect to timberlands as calculated by the
2 Campbell Group; isn't that right?

3 A. There are specific calculation dating for the
4 past 20 years, that's correct.

5 Q. And you have no reason to believe that
6 Campbell hasn't calculated this correctly, do you?

7 A. I have no idea whether they have calculated it
8 correctly or incorrectly.

9 Q. But you have no reason to believe it's not
10 calculated correctly, right?

11 A. It's a sales document for their services, so
12 perhaps I'm somewhat cynical about how they calculate
13 these things, but no I have no specific.

14 Q. Can you turn back to the first page of this
15 document. Do you notice the sixth paragraph that starts
16 with "timberland is a growing asset"?

17 A. Yes.

18 Q. It says "timberland is a growing asset."

19 MR. KRUMHOLZ: Your Honor, just for the
20 record I object to the use of this document. I allowed
21 the chart given the Court's prior discussion but this is
22 all a sales document. The same thing as before, it's
23 hearsay, and I object to it. It's not authoritative.

24 MR. BRILLIANT: Your Honor, he's an
25 expert witness. I'm going to ask him what it says here

1 and whether he agrees with it. He's an expert, he
2 should be able to tell us whether he agrees with what
3 other people --

4 THE COURT: I mean, you are entitled to
5 ask hypothetical questions even if it's just made up he
6 can ask him a hypothetical.

7 MR. KRUMHOLZ: Then take it off the
8 screen, don't use the document for support and he can
9 ask any question he wants.

10 THE COURT: Well, the screen is just a --
11 you know, I agree that a screen could have a profound
12 impact on a jury but the screen isn't going to have an
13 impact on the Judge. So I don't find the screen a
14 problem. It makes it easier for everybody. So let's
15 just go ahead. But I think we've had about -- I mean,
16 you know, this is a one-page testimony and they took 15
17 or 20 minutes and now you've spent, I don't know, almost
18 an hour on this witness so it's time to finish up. And
19 let's move on.

20 MR. BRILLIANT: Okay. Thank you, Your
21 Honor.

22 Q. (By Mr. Brilliant) It says "timberland is a
23 growing asset, requires moderate to low added capital
24 investment over time. Relative to asset values,
25 timberlands generate income through the harvesting and

1 selling of trees which are raw materials sold to
2 companies that produce a multitude of wood based
3 products. In a way, timberland is a commodity, not
4 unlike petroleum which can be warehoused indefinitely by
5 simply not harvesting." Do you agree or disagree with
6 that statement?

7 A. There's multiple statements there. The first,
8 I'm not a timberland asset. I mean, I understand that
9 it's a growing asset. With regards to capital
10 investment, I have no opinion whatsoever. The second
11 statement with regards to the generation of income
12 through harvesting and selling of trees for producing a
13 multitude of wood based products, summarizing it, I
14 believe that that is correct. Three, in a way
15 timberland is a commodity not unlike petroleum, I would
16 say not exactly, but it is to a degree a commodity. It
17 can be warehoused indefinitely by simply not harvesting.
18 From a statement standpoint, I agree with that. From a
19 financial standpoint, I do not agree with it.

20 Q. Go down two sentences further down. It says
21 "prices for timberlands are less volatile than
22 commercial real estate as the economic cycle for
23 timberlands from planting to harvest is longer." Do you
24 agree with that statement?

25 A. I understand based on analyst reports that

1 I've ahead that that is a correct statement.

2 Q. Now, during the four days prior to your
3 deposition after you were retained in this matter, you
4 made no effort to determine whether any experts or
5 consultants tracked a demand for the purchase of
6 timberlands, did you?

7 A. Could you restate the question?

8 Q. Sure. During the four days prior to your
9 deposition while were you retained on this matter, you
10 made no effort to determine whether any experts or
11 consultants tracked the demand for the purchase of
12 timberlands, did you?

13 A. No.

14 Q. And you are not aware of any specific
15 transactions of any purchase or sale of timberlands that
16 occurred during the bankruptcy period; isn't that right?

17 A. I am not.

18 Q. And you did not do a survey of discount rates,
19 did you?

20 A. No, I did not. I was not retained to do so.

21 Q. You didn't call anyone who is an expert in
22 discount rates for timberlands to find out whether
23 discount rates in the timberland business had changed
24 during the bankruptcy period, did you?

25 A. I did not. It was not part of my opinion.

1 Q. Now, when -- when I took your deposition, you
2 were not aware of what Sewall was; is that correct?

3 A. I was not.

4 Q. Are you aware today?

5 A. Roughly, yes.

6 Q. You're aware that Sewall has been retained by
7 the official creditors committee as a consultant?

8 A. Other than what I heard just several minutes
9 ago in the courtroom, no, I was not aware.

10 Q. But you're aware that Sewall is one of the
11 largest consulting firms in the timberland industry;
12 isn't that right?

13 A. I have heard that.

14 Q. Now, you have no view, isn't that right, you
15 have no view whatsoever as to whether discount rates for
16 the purchase of timberlands has increased or decreased
17 during the bankruptcy period; isn't that right?

18 A. No opinion.

19 Q. Now, I believe you testified earlier that you
20 don't know the nature of timber purchasers; is that
21 right?

22 A. That's correct.

23 Q. And you don't know if timberland investors
24 look for the current weaknesses in timber markets and
25 base their values on longer term or more normalized log

1 prices; isn't that right?

2 A. No.

3 Q. No, you don't know?

4 A. No, I don't know, although I will say the
5 statement is counter to basic financial valuation
6 techniques.

7 Q. But you don't know?

8 A. But I don't know.

9 Q. Now, you're not aware of -- and as you
10 testified earlier, you're not aware of whether or not
11 purchasers -- you know, strike that.

12 I showed you at your deposition a report
13 from -- a PowerPoint presentation that was put together
14 by Sewall for a speech; is that correct?

15 A. You did.

16 Q. And that showed that Sewall had done a survey
17 and that they believed that discount rates had --

18 MR. KRUMHOLZ: I'll object, Your Honor,
19 on the same basis as before. I know they're working
20 like never before to get in this Sewall document that's
21 a paid presentation by a consulting expert, given at a
22 speech in May right after the hearings. But it just
23 shouldn't be allowed in the courtroom.

24 THE COURT: You already asked him if he
25 knew about it.

1 MR. BRILLIANT: I'm now going to ask him
2 what's specifically in it, Your Honor. First of all,
3 Your Honor, I was quiet when he spoke.

4 THE COURT: Don't argue at the same time.
5 You argue one at a time and whenever I talk, everybody
6 is supposed to be quiet. Those are the -- those are
7 time honored rules, okay? So we'll try to stay with it.
8 Go ahead, you do your argument.

9 MR. BRILLIANT: Thank you, Your Honor.
10 The first thing, Your Honor, is the Sewall document is a
11 presentation at a conference that was delivered by
12 Mr. Vickery and reports --

13 THE COURT: The appropriate way to get
14 that in is to have the guy testify about it. Now, you
15 can ask him questions about -- just if your expert has
16 told you that a certain thing is a certain way, you can
17 ask him is it not true that such, such, such. If he
18 doesn't know, he says he doesn't know. But then you
19 can't say, well, but if so-and-so said it at
20 such-and-such a time, do you agree with him, and somehow
21 get that in. I mean, I don't see how you -- I think you
22 made your point. You're not -- you can't use -- it's
23 really not even a fine line. I mean, you can ask all
24 the questions you want to to show the limits of his
25 knowledge within -- I lose my patience at a certain

1 point. You know, if you ask him who lives on Furman
2 Street in Corpus Christi, that's probably not relevant.
3 But you asked all these questions, they are arguably
4 relevant about his limited knowledge. Now, what you
5 can't do is you can't -- and you can ask him one of
6 those questions based on something that your expert told
7 you but you then can't ask him -- and you can ask him
8 isn't it true that such-and-such whatever your expert
9 told you. But then you can't just somehow show him this
10 and here it is, he said that, are you still sure it's
11 not true? I mean, I'm not sure where we're going there.
12 That's about all you can do, is ask him the subject and
13 ask him whether it's true or not. You can't somehow get
14 in your expert's report by asking him a question that he
15 doesn't know the answer to.

16 MR. BRILLIANT: I'm just trying to check
17 on his knowledge, Your Honor.

18 THE COURT: I understand that and you've
19 done that and I think we've made -- I think you've made
20 the point there. So --

21 MR. BRILLIANT: I'll move on, Your Honor.

22 THE COURT: Nobody says he is. Let's
23 move on.

24 MR. BRILLIANT: Thank you, Your Honor.

25 Q. (By Mr. Brilliant) Mr. Radecki, you based

1 your view that asset values dropped because financing
2 had become unavailable and more expensive, correct?

3 A. That's a significant portion of it, yes.

4 Q. But in connection with timberlands, you did
5 not do any surveys to determine whether or not the
6 financing for timberlands has become more expensive or
7 less available, have you?

8 A. I didn't feel I needed to.

9 Q. And you didn't call any lenders or do any
10 surveys of lenders to confirm your view that timber
11 loans are either more expensive or less available, did
12 you?

13 A. I didn't believe I needed to, no.

14 Q. But you -- but you believe that if you had
15 more time, that you would have loved to have done that;
16 isn't that right?

17 A. Well, I mean, if I could have specifically
18 gone in and talked to people who are lending money, that
19 would have been helpful but I don't think it would have
20 changed my opinion certainly because my opinion ranges
21 on financing markets across the board.

22 Q. So you're saying if you would have had the
23 time to have done a survey and you would have done a
24 survey and lenders would have told you, no, we think
25 timberlands are, you know, a great -- timberland loans

1 are a great investment now, you know, given that other
2 things are more risky, this is something we're really
3 focused on, we really want to do this, that wouldn't
4 have changed your view?

5 A. It would have changed my view if they would
6 have said that but I don't believe they would have said
7 that.

8 Q. Well, you don't know because you didn't survey
9 them; isn't that right?

10 A. That's correct.

11 Q. Now, you testified earlier you're not familiar
12 with any lenders who regularly lend to timberland
13 companies; isn't that right?

14 A. I am not.

15 Q. And you're not familiar with the capital
16 structures of timberland companies; isn't that right?

17 A. Across the board, no.

18 Q. And you have no specific information and did
19 no analysis on the specific market for timber loans,
20 timber notes and timber bonds; isn't that right?

21 A. I did not.

22 Q. In determining the willingness of capital
23 markets to finance timberland companies, you did not
24 look at changes in the rates of any specific timber
25 bonds, right?

1 A. I did not.

2 Q. You did not look at any indexes with respect
3 to timber bonds; isn't that right?

4 A. Not specifically timber bonds but bonds that
5 were created by credit worthiness across the board.

6 Q. But with respect to specific timber bonds, you
7 looked at no indices; isn't that right?

8 A. I did not.

9 Q. And you didn't look at any changes in interest
10 rates with respect to real estate investment trust, did
11 you?

12 A. I did not.

13 Q. And you did no analysis as to whether the
14 daily treasury yield curve correlates with timberland
15 values; isn't that right?

16 A. I did not.

17 Q. Now, sir, you've testified about 50 times
18 before; isn't that right?

19 A. At least.

20 Q. So many times, in fact, that you don't know
21 how many times you've testified, right?

22 A. That's correct.

23 Q. Since 2002 or so, about half your work has
24 been in connection with representing asbestos plaintiff
25 representatives in asbestos bankruptcies; isn't that

1 right?

2 A. Approximately. I haven't done a calculation
3 but I did a significant amount of work with
4 asbestos-related situations over the last few years.

5 Q. And you're not aware of anything that Scopac
6 did that resulted in a reduction of its value; isn't
7 that right?

8 A. Specifically, no.

9 Q. And you didn't prepare your proffer, did you?

10 A. The actual written proffer?

11 Q. Yes, sir.

12 A. Could you ask the question again because I
13 want to make sure.

14 THE COURT: Did you prepare it?

15 A. Did I prepare it? I assisted in the
16 preparation of it, yes.

17 Q. But someone else typed it up, you reviewed it
18 and commented on it?

19 A. I made significant edit to it, correct.

20 Q. Now, you've never advised a client with
21 respect to purchasing and selling auction rate
22 securities, have you?

23 A. I have not.

24 Q. And you've never advised a client with respect
25 to the value of auction rate securities, have you?

1 A. I have not.

2 Q. And you've not written any reports on auction
3 rate securities, have you?

4 A. I have not.

5 Q. And you've not valued any auction rate
6 securities, have you?

7 A. I have not.

8 Q. And all auction rate securities are not the
9 same, are they?

10 A. They are not.

11 Q. And some auction rate securities are worth
12 less than others, right?

13 A. Yes.

14 Q. And you've not done a survey of all auction
15 rate securities and therefore, you cannot say that
16 auction rate securities are worth less than the face --
17 any specific auction rate security is worth less than
18 the face amount or par amount of the security; is that
19 right?

20 A. I could through analysis, but I have done no
21 such analysis.

22 Q. Now, if an auction rate security was
23 guaranteed by the United States of America, it's likely
24 that it would be paid upon maturity; isn't that right?

25 A. Upon maturity, yes, that's likely.

1 Q. And you have not reviewed any individual
2 auction rate securities that are held by Scopac, have
3 you?

4 A. I have not.

5 Q. You haven't read their agreements?

6 A. No, I have not.

7 Q. And you haven't analyzed what is specific
8 rights for those securities are; isn't that right?

9 A. I have not.

10 Q. And in fact, you've not even seen a list of
11 what the securities are that comprise the auction rate
12 securities involved here; isn't that right?

13 A. No, I have not.

14 Q. And you have done no analysis with respect to
15 the specific auction rate securities held by Scopac of
16 any kind, right?

17 A. I have not.

18 Q. Therefore, you have no specific idea how much
19 the Scopac auction rate securities are worth, do you?

20 A. I don't have any specific idea, no.

21 Q. And you have no specific dollar valuation as
22 to how much the Scopac timberlands may have -- value may
23 have changed during the bankruptcy period, do you?

24 A. Dollar value, no.

25 MR. BRILLIANT: Pass the witness, Your

1 Honor.

2 THE COURT: All right. Does anyone else
3 over here have any questions?

4 MR. JONES: Your Honor, I have some
5 questions. I'm happy to go after -- I don't know if the
6 committee.

7 THE COURT: Does the committee have
8 questions?

9 MR. FIERO: None from the committee, Your
10 Honor.

11 THE COURT: So you're the only one that
12 has questions other than redirect.

13 MR. JONES: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. JONES:

16 Q. Good morning, Mr. Radecki. Evan Jones on
17 behalf of Bank of America.

18 A. Good morning.

19 Q. Mr. Radecki, would it be a fair summary of
20 your testimony today that a number of factors over the
21 last 18 months in the economy, including housing
22 decline, financing crisis, subprime mortgage crisis,
23 have resulted in a decline in the general asset class of
24 timberlands?

25 A. That's correct.

1 Q. But you haven't sought to quantify that
2 decline, have you?

3 A. I was not asked to do so, no.

4 Q. And it would be fair to say from your
5 testimony that that decline has not been the same across
6 all assets in that class, wouldn't it?

7 A. All assets will never decline perfectly in
8 line.

9 Q. So the answer is yes, that would be fair?

10 A. That's fair.

11 Q. Okay. You also haven't sought to determine
12 when that decline occurred, whether it's a linear
13 decline over that time period, accelerating,
14 decelerating, whatever?

15 A. No, I have not come up with any line type
16 analysis.

17 Q. Now, Mr. Radecki, during that time period, how
18 many times did the Federal Reserve lower the discount
19 rate?

20 A. More than a dozen.

21 Q. And if everything else was held constant,
22 lowering the discount rate would tend to increase the
23 value of these assets, wouldn't it?

24 A. All things being held constant, that would be
25 correct.

1 Q. And how many times was the prime rate lowered
2 during this 18 months?

3 A. As many times as probably the fed lowered the
4 discount rate.

5 Q. And if all other things were held constant,
6 that would tend to increase the value of this
7 collateral, wouldn't it?

8 A. All things being held equal, yes.

9 Q. And what happened to the U.S. dollar exchange
10 rate versus the Canadian dollar during that time period?

11 A. The Canadian dollar rose against the U.S.
12 dollar during that time period.

13 Q. And again, if everything else were held
14 constant, that would result in increasing the value of
15 these assets, wouldn't it?

16 A. These assets being the U.S. --

17 Q. The collateral for the Indenture Trustee. And
18 by the way, collateral for my client.

19 A. Well, there's a number of different
20 collateral, there's the securities, there's the
21 timberlands.

22 Q. Okay. Let's talk just about the timberlands.

23 A. I believe the -- I have not done such
24 analysis, but I believe that the decline in the value of
25 the U.S. dollar versus the Canadian dollar potentially

1 increases the value of the timberlands. Let me finish
2 my answer. Pursuant -- in comparison to like Canadian
3 product. Depending on where the dollar goes, could
4 reduce the value of the timberlands, vis-a-vis
5 ultimately through the log prices vis-a-vis other
6 material out there that would come from other foreign
7 sources.

8 Q. I want to make sure I understand your
9 testimony. Are you telling me that if all other things
10 are held equal, you can't tell whether the exchange rate
11 would increase the value of these assets?

12 A. I didn't realize that you said all other
13 factors being held equal.

14 Q. All other factors being held equal.

15 A. All other factors being held equal, they would
16 become more valuable.

17 Q. Mr. Radecki, are you an expert on workouts and
18 bankruptcy?

19 A. I believe I am.

20 Q. You've represented secured lenders before?

21 A. I have.

22 Q. In your experience, isn't it true that a
23 secured lender would often prefer to have its borrower
24 conduct an orderly sale of collateral than have a
25 foreclosure sale?

1 A. Yes.

2 Q. And that's because the orderly sale often
3 yields a higher value than the foreclosure sale, right?

4 A. That's at least a notion out there based on
5 experience.

6 Q. And that's because lenders worry whether a
7 foreclosure sale actually gets fair market value for
8 assets, right?

9 A. That's correct.

10 Q. You worry if you schedule foreclosure, you
11 don't know who's going to show up, you don't know who's
12 going to be interested in buying assets that day?

13 A. I think creditors have taken that viewpoint
14 several times in several cases.

15 Q. That would be consistent with advice you've
16 given to your clients, isn't it?

17 A. That's correct.

18 Q. Foreclosures take time?

19 A. They do.

20 Q. And in California when you're dealing with
21 real estate, it's a significant amount of time, isn't
22 it?

23 A. Not aware of exact California foreclosure
24 regulations.

25 Q. You don't know?

1 A. I don't know.

2 Q. Do you know it's a period of at least several
3 months?

4 A. I don't know.

5 Q. But you do know there are legal requirements?

6 A. Yes, I do.

7 Q. Okay. And often there's time required for
8 marketing of the assets, right?

9 A. Often.

10 Q. And there are costs involved?

11 A. Of course.

12 Q. And again, buyers are often willing to pay
13 more at an orderly sale by a -- by a borrower where they
14 can get reps and warranties than a foreclosure sale
15 where all they get is a trusted sale guarantee; is that
16 fair?

17 A. Yes, sometimes they are.

18 Q. Usually?

19 A. Most times.

20 Q. You've advised your clients to proceed on that
21 understanding?

22 A. Not in every case, but yes, many times.

23 Q. Most times?

24 A. Most times.

25 MR. JONES: Your Honor, I have no further

1 questions. Thank you, Mr. Radecki.

2 MR. NEIER: Your Honor, I have one
3 question to clarify something Mr. Jones asked.

4 THE COURT: All right.

5 CROSS-EXAMINATION

6 BY MR. NEIER:

7 Q. Good morning. David Neier on behalf of
8 Marathon. Good morning, Mr. Radecki.

9 A. Good morning, Counsel.

10 Q. Mr. Radecki, Mr. Jones asked you about a
11 decline in various markets that has happened over the
12 past 18 months.

13 A. Correct.

14 Q. Do you remember that question?

15 A. I do.

16 Q. In fact, you haven't expressed an opinion over
17 the past 18 months, you've expressed an opinion that
18 there's been market decline since the middle of 2007,
19 correct?

20 A. No.

21 Q. Well, if you recall your proffer -- and I can
22 show you a copy if you wish. I'll just read the
23 sentence to you. It says "as a result of these factors
24 the value of assets, particularly those which generate
25 relatively low present earnings such as timberlands

1 dropped precipitously beginning in the middle of 2007
2 and continue to drop." Do you recall that?

3 A. I do.

4 Q. And that is your opinion, correct?

5 A. My opinion covers the entire bankruptcy
6 period, paragraph two references the bankruptcy period
7 as January 18 through June 25th. The sentence at the
8 bottom of page 2 of the proffer and the beginning of
9 page 3 that you read really goes to the amount of the
10 drop and when the precipitous drop began, and that was
11 really in the middle of 2007.

12 Q. So it's your testimony that there was a market
13 drop from January 2007 to June of 2007?

14 A. The market was beginning to be impacted by
15 these various factors in the beginning of 2007, yes.

16 Q. Beginning of 2007?

17 A. Yes.

18 Q. And did that reflect in the stock market or
19 any -- any other index that you can point to?

20 A. It began to be reflected in the credit market
21 certainly as well as the home building and building
22 products market, yes.

23 Q. Well, building markets?

24 A. Among others.

25 Q. Now we're going a little bit beyond Mr. Jones'

1 question, but companies that make building materials,
2 they have to sell their products in order to make money,
3 correct?

4 A. That's correct.

5 Q. But a timberland company, the trees just grow.
6 They don't have to sell their products in order for
7 there to be an appreciation of the asset, correct?

8 A. That's, based on what you just said, an
9 impossible to answer a question. Certainly there's
10 appreciation in the amount of inventory they have. With
11 regards to valuation, that's uncertain.

12 Q. I made a product, I can't sell it because of
13 some market factor, correct?

14 A. That's correct.

15 Q. But a tree just grows on the property,
16 correct?

17 A. Yeah, and you have more inventory product.
18 That doesn't necessarily mean the product is worth more.
19 The price of the product could be dropping.

20 Q. I have more inventory, that inventory creates
21 value, correct?

22 A. It does.

23 MR. NEIER: Okay. No further questions,
24 Your Honor.

25 THE COURT: Okay. Now redirect.

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REDIRECT EXAMINATION

BY MR. KRUMHOLZ:

Q. Mr. Radecki, Mr. Jones asked you all other things held constant and then he went through a number of different questions. Do you recall that?

A. I do.

Q. Discount rates going down, a whole slew of questions in that regard. Do you recall that?

A. I generally recall the question, yes.

Q. Have all things held constant?

A. No, absolutely not.

Q. What has not held constant?

A. Nothing has held constant. You know, in the economy -- economic conditions we're seeing, we're seeing lots of other, obviously, impacts and effects above and beyond inflation. There are reasons that inflation is occurring. I believe Mr. Jones asked me questions about the U.S. dollar. There's reasons that the dollars are dropping and those macro economic trends that we're seeing and the manner in which they're impacting differences have effects on those businesses and on values ultimately.

Q. MRC's counsel went through a number of things that you're not, and I think he mentioned a registered forester. You never claimed to be one of those, right?

1 A. No. That's correct.

2 Q. He indicated you didn't do a written report or
3 any sort of detailed spreadsheet in connection with your
4 analysis. Do you recall that?

5 A. I do recall that.

6 Q. What do you do every single day of your life?

7 A. I'm a participant in the credit markets. I am
8 constantly seeking through my investment banking
9 practice to value companies and, in turn, to be able to
10 finance those companies up and down the capital
11 structure, but to a large degree through the credit
12 markets.

13 Q. How closely do you follow the credit markets?

14 A. Every minute of every working day. And many
15 that are not working.

16 Q. How closely do you follow the equity markets
17 as it relates to the credit markets?

18 A. I have to follow it because it is an indices
19 of value.

20 Q. How long have you done this, each and every
21 day?

22 A. For 28 years.

23 Q. And do you need more than four days to get up
24 to speed on what the credit markets are doing at any
25 particular time?

1 A. No. Frankly, I would need five minutes.

2 Q. You know, I find Mr. Strubeck incredibly
3 valuable. Did you in terms of what he provided you?

4 A. No. It wasn't value at all. It was just
5 confirmatory.

6 Q. Did you need Mr. Strubeck to provide you even
7 one piece of paper to understand the credit markets and
8 the impact those credit markets have on assets like the
9 timberlands generally?

10 A. He saved me a couple minutes of looking up on
11 a Bloomberg terminal some of the information, but I knew
12 it.

13 Q. How closely have you followed the credit
14 crisis that we're in -- that we're in?

15 A. Extremely closely.

16 Q. Is this some sort of secret that we've kept in
17 this courtroom that there's some sort of credit crisis?

18 A. Not to my knowledge.

19 Q. Can you describe the extent of that credit
20 crisis that it's had on the U.S. economy?

21 A. Well, we're still seeing the impact so it's
22 impossible to come to a conclusion to that, and an
23 answer to that question.

24 Q. Have we seen anything like that?

25 A. Frankly we have not seen anything to this

1 extent. Certainly not during my 28 years.

2 Q. Are there -- is there substantially less
3 dollars in the marketplace to purchase assets like the
4 timberlands?

5 A. Substantially less dollars.

6 Q. Let's go through that just a minute, just so
7 we can look at it from a real practical perspective.
8 Private equity companies have been out there for a while
9 purchasing companies and LBOs; is that right?

10 A. At least since the mid '80s, yes.

11 Q. Hedge funds have been doing the same thing?

12 A. For the last decade hedge funds have become an
13 increasingly important part of the market in terms of
14 their capital and their ability to buy companies.

15 Q. And have traditional lenders done much of the
16 same thing and followed in step to try to keep up with
17 the profits of the hedge funds and the private equity
18 firms?

19 A. Absolutely.

20 MR. JONES: Your Honor, I'm going to
21 object. I don't think this goes to any of the
22 cross-examination.

23 MR. KRUMHOLZ: That's not true, Your
24 Honor. They covered the waterfront on
25 cross-examination.

1 THE COURT: Overruled. Go ahead.

2 Q. (By Mr. Krumholz) Now, typically do you have
3 equity in debt in connection with these transactions?

4 A. Yes.

5 Q. What percentage?

6 A. It's all over the map, depending on what type
7 of company and how it's financed. A highly levered
8 company will sometimes have, you know, ten percent,
9 sometimes even less in terms of equity. Investment
10 grade companies will oftentimes have more equity in
11 their balance sheet than they have debt.

12 Q. In many of these LBO transactions where a lot
13 of markets are in the marketplace, you have over 50
14 percent debt, right?

15 A. Most LBO transactions are at least two-thirds
16 debt, many are up to 70 to 80 percent debt.

17 Q. And what happened to the sort of debt market,
18 the debt market in connection with these types of
19 transactions during the relevant time frame?

20 MR. JONES: Your Honor, no one until
21 counsel just now starts talking about an LBO transaction
22 has ever discussed anything like that. That doesn't tie
23 into anything in the cross-examination.

24 MR. KRUMHOLZ: That's exactly false, Your
25 Honor. They asked a multitude of questions about the

1 credit markets and how it didn't have an impact in all
2 sorts of manner of ways and I just wanted to bring it
3 home. I understand why they don't want this witness to
4 testify about it, but you deserve to hear it.

5 MR. BRILLIANT: Your Honor, Alan
6 Brilliant on behalf of Mendocino Redwoods. I did not
7 ask him about LBOs and the credit markets other than as
8 it related to timberlands specifically. And what
9 counsel is now doing is talking about the credit markets
10 generally which is not something that we cross examined
11 him on.

12 MR. KRUMHOLZ: That's not true. You did.
13 You asked him specifically.

14 THE COURT: Go ahead. Go ahead and ask
15 the question.

16 Q. (By Mr. Krumholz) Now, how have the debt
17 markets changed in the course of the bankruptcy with
18 respect to all of this access of capital that was around
19 in the last ten months -- in the last 18 months?

20 A. That's -- that's a very complex question just
21 because there's been so many different effects. But to
22 try to summarize it, debt -- the markets have become
23 relatively illiquid. It is much more difficult at this
24 time to raise capital. And there's lots of reasons
25 behind that, whether it's what people anticipate for the

1 economy going forward, it's potentially where spreads
2 have gone. It's the fact that a number of players have
3 come out of the market, whether it's the investment
4 banks or the commercial banks through their losses and
5 their own loan portfolios, whether it's the hedge funds
6 through the reduction in leverage that they have, and
7 accordingly the downsizing of their portfolios, there's
8 just a multiple almost of capital that's been taken out
9 of the mark -- the debt markets.

10 That, in turn, ultimately impacts valuations
11 because valuations are ultimately driven by what someone
12 is able to pay for a property. To the extent they can't
13 get debt capital or they can get debt capital, but it's
14 at much higher rates than it was previously, that
15 affects the return analysis and ultimately leads to a
16 decrease in multiples and a decrease in value for
17 assets.

18 Q. Do you believe indices are good proxies for
19 the Scopac timberlands?

20 A. There may be some out there, but I'm not
21 necessarily aware of any.

22 Q. Have you seen any that you're aware of through
23 Mr. -- the MRC's counsel, his examination that you
24 believe are somehow good proxies for that?

25 A. I've seen the NCREIF, obviously, timberland

1 index and I've seen the S&P global timber and forest
2 index, and frankly, those indexes don't even correlate,
3 so I don't understand how they could be good proxies.

4 Q. And what about the equities shown to you by
5 MRC's counsel, that is, the stock, are those good
6 proxies?

7 A. Those equities are -- they're impacted by a
8 number of different factors. They are impacted by what
9 the company's specific capital structure is. They're
10 impacted by the amount of timberland they have versus
11 other operations. Many of those comp companies -- I
12 understand what Houlihan might have been trying to do,
13 they're not perfect comps. In fact, some of them have
14 significant manufacturing operations and timberlands
15 are, you know, a minor piece of the puzzle.

16 Q. What about management, do they have different
17 management?

18 A. They have different management teams with
19 different skill sets and different abilities in
20 particular market places and different businesses, so
21 they're not perfect proxies for pricing timberlands.

22 Q. I wanted to talk to you just a little bit
23 about Mr. Brilliant's questions concerning the pricing
24 and values over time. Have you looked at the Court's
25 findings in this case?

1 A. I've read through them, yes.

2 Q. Can we go ahead and show -- here's paragraph
3 156 from some of the Court's findings. It says "log
4 prices have dropped significantly from October 1, 2007
5 through the present by as much as 10 to 15 percent
6 particularly in young growth redwood." Do you see that?

7 MR. BRILLIANT: Your Honor, I'm going to
8 object. Again, this is outside the scope of direct
9 examination. I did not ask him any questions about, you
10 know, the Court's findings. And in fact --

11 THE COURT: Well, you asked him if he
12 knew anything about log prices and he said he didn't.

13 MR. BRILLIANT: Right, and he didn't.

14 THE COURT: I'm not sure you can now use
15 this witness to --

16 MR. KRUMHOLZ: He opened the door.

17 THE COURT: He already said he didn't
18 know anything about log prices. I mean, are you just
19 trying to suggest that he knows that there was a finding
20 that said that they dropped?

21 MR. KRUMHOLZ: There are a number of
22 findings I wanted to ask him if they're consistent with
23 his opinion on value.

24 MR. BRILLIANT: Your Honor, he has no
25 opinion on Scopac's value. He said I opened the door on

1 log prices. He closed it when he said he didn't have
2 any information on it. He also, Your Honor, I asked him
3 if he had any specific information about Scopac and he
4 also said he did not. So obviously he read this order
5 after he was deposed and now what counsel would like him
6 to do is testify to something that's not part of his
7 proffer, is not part of his proffer. All he says in his
8 proffer is that generally asset classes, including
9 timberlands, precipitously decline in value. He says
10 nothing in there about log prices.

11 THE COURT: I think he wants to ask him
12 if this finding is consistent with his opinion.

13 MR. BRILLIANT: We all know that --

14 MR. KRUMHOLZ: It is.

15 THE COURT: And I think the answer is
16 going to be yes. I don't think it's that big of a deal.
17 Let's ask the question. Is this finding consistent with
18 your opinion?

19 THE WITNESS: Yes, Your Honor, it is.

20 THE COURT: Okay. Let's go on.

21 Q. (By Mr. Krumholz) And then the Court says
22 that these log prices that have declined and attribute
23 to the economic slowdown, particularly in the housing
24 market which has resulted in a decline in building and
25 remodeling activity. Is that exactly your opinion?

1 A. That's correct.

2 Q. "And then if we get a recent market sales of
3 young growth redwood would indicate the price is more
4 appropriately valued at \$800 to \$850 per thousand board
5 feet." Again, reflecting the discount of 10 to 15
6 percent price. Is that consistent with your opinions?

7 A. The discount would be consistent, yes.

8 Q. I just have one more question, Mr. Radecki.
9 You mentioned the healthcare market, you mentioned
10 metals and, of course, energy. Outside of energy, which
11 we all know what's occurred there, outside of
12 healthcare, we all have a pretty good idea of what's
13 going on with healthcare prices.

14 THE COURT: And we all know about copper.

15 Q. (By Mr. Krumholz) And metals. Outside of
16 this bankruptcy and outside of this courtroom where
17 obviously the litigation is pretty contested, has anyone
18 suggested to you that assets like these timberlands have
19 increased in value or done anything but decrease in
20 value from January 18, 2007 to the present?

21 A. I think it's nonsensical to, you know -- while
22 I understand why those areas have gone up, they're
23 largely going up because of the end usage of those
24 products to divorce timberlands from what's going on in
25 the general marketplace. And their end products, I

1 think, is directly counter to what we see going on in
2 those and therefore, not a good -- those properties,
3 metals, energy, healthcare, are not naturally good comps
4 for timberland.

5 Q. There's one other question that somebody else
6 wanted me to ask and so I apologize. The credit
7 spreads, could you explain to the Court what credit
8 spreads are and why that's significant to this case.

9 A. Well, I referenced it, I guess, in my earlier
10 testimony. Credit spreads are the amount that investors
11 require off of a -- usually an index, usually an index
12 to some treasury security based on the duration of the
13 security above and beyond what that risk -- what are
14 generally considered risk-free rate is required for
15 companies to finance.

16 And it is a measure generally based on the
17 creditworthiness of the bond as determined by one of the
18 rating agencies. And, you know, it is something that is
19 day-to-day measured in the financial markets as to
20 whether or not they're widening or decreasing and what
21 that generally means for the economy and for the ability
22 of companies to raise money and how much such money --
23 such capital will cost them.

24 Q. What's the significance to this case?

25 A. The significance to this case is we've seen

1 over the course of the last 18 months because of the
2 condition in the economy and what's going on in the
3 financial markets a very material widening of spreads
4 across the board, no matter what type of asset class is
5 involved.

6 Any asset class that is utilizing debt, all
7 things being held equal, is now paying more for that
8 debt. AAA rated bonds, which is the highest credit
9 classes as rated by, for example, Standard & Poor's,
10 that credit spread has widened out approximately 100 --
11 50 to 100 basis points, depending on the situation. At
12 the lower tiers of the credit, of the credit structure
13 that S&P publishes, those credit spreads have gone out 4
14 to 600 points, which basically means people are paying,
15 in many cases, double what they were 18 months ago to
16 raise debt.

17 Q. And what's the impact on value?

18 A. Impact on value is if you -- just as though
19 you can't -- if you can't get debt, you have trouble
20 financing, and accordingly values have to come down. If
21 credit becomes much more expensive, that ultimately
22 affects the rate of return on the investment. If the
23 rate of return on the investment is going to be lower,
24 investors need to consider that inside how they value
25 those assets. And to the extent rates are returned are

1 lower, values are going to be lower across the board.

2 MR. KRUMHOLZ: No further questions, Your
3 Honor.

4 THE COURT: All right. You can step
5 down. Next witness.

6 MR. SHIELDS: Your Honor, the Indenture
7 Trustee calls James E. Fleming.

8 THE COURT: Okay.

9 JAMES FLEMING,
10 having been first duly sworn, testified as follows:

11 MR. SHIELDS: Your Honor, Todd Shields
12 for Bank of New York Indenture Trustee for the timber
13 notes. Has the witness been sworn?

14 THE COURT: He has.

15 MR. SHIELDS: Thank you.

16 DIRECT EXAMINATION

17 BY MR. SHIELDS:

18 Q. Mr. Fleming, please reintroduce yourself to
19 the Court and state for the record the name and address
20 of your firm.

21 A. My name is James E. Fleming. I'm the owner of
22 J.E. Fleming & Associates, Sacramento, California.

23 Q. Do you make your living as a forestry
24 consultant?

25 A. Forestry consultant and real estate appraiser.

1 Q. Mr. Fleming, do you have your proffer there
2 with you on the witness stand?

3 A. Yes, I do.

4 Q. Okay. Because your proffer deals at length
5 with your education, experience and credentials, I'm not
6 going to spend very much time on this. But can you at
7 least confirm for the Court that you are a California
8 registered professional forester, a California certified
9 general real estate appraiser, and a member of the
10 Appraisal Institute with the designation of MAI
11 appraiser?

12 A. I am.

13 Q. Can you further confirm that after receiving
14 your forestry degree from the University of California
15 at Berkley in the mid 1960s and completing your service
16 with the U.S. Marine Corps in Vietnam, you have spent
17 your entire professional career in forestry consulting
18 and real estate appraising in the State of California?

19 A. That's true.

20 Q. Were you retained by the Indenture Trustee to
21 provide expert opinions in connection with the Indenture
22 Trustee's motion to establish a super-priority
23 administrative claim pursuant to section 507(b) of the
24 bankruptcy code?

25 A. Yes.

1 Q. Specifically were you retained by the
2 Indenture Trustee to appraise the timberlands owned by
3 Scopac and to express an expert opinion as to their
4 value as of the January 18, 2007 date of the filing of
5 the bankruptcy petitions in this proceeding and also to
6 express an expert opinion regarding whether the value of
7 Scopac's timberlands diminished between the date of the
8 filing of the bankruptcy petitions and the current date?

9 A. Yes.

10 Q. Did you do that?

11 A. Yes, I did.

12 Q. What opinions did you reach?

13 A. My opinion that the market value of the Scopac
14 timberlands as of January 18th, 2007 is \$464 million and
15 that the value --

16 Q. Let me interrupt you. I'm pretty sure you
17 misspoke. I don't have live notes in front of me, but
18 could you start over so we don't -- maybe I heard wrong,
19 but describe your first opinion as to the value of the
20 Scopac timberlands as of the petition date.

21 A. It would be \$646 million.

22 Q. Okay. And did you form any other opinions as
23 part of this engagement?

24 A. Yes, I did.

25 Q. And what were those other opinions?

1 A. That the value of the Scopac timberlands has
2 diminished significantly since the petition date to the
3 present.

4 Q. Did you form any opinion that quantifies the
5 diminishment in the value of Scopac's timberlands
6 between October 1, 2007 valuation date covered in your
7 prior appraisal work and the present date? Did you try
8 to quantify that?

9 A. No, I did not.

10 Q. Okay. You, I take it, have read the Court's
11 findings of fact and conclusions of law issued June 6,
12 at least insofar as they contain the Court's comments
13 regarding your testimony, correct?

14 A. Yes.

15 Q. Is that right?

16 A. That's correct.

17 Q. All right. And do you recall that the Court
18 made the observation that in view of the October 1, 2007
19 valuation date that you had used in your appraisal of
20 the Scopac timberlands and the evidence in the record of
21 a decline of 10 to 15 percent in certain of the log
22 prices of the types of trees in the Scopac timberlands,
23 that your -- there had been -- if that was taken into
24 account in your valuation, it would knock down your
25 valuation by \$100 to \$150 million or so, do you recall

1 that?

2 A. I believe I read that, yes.

3 Q. Okay. Now, is that consistent with the
4 opinions you formed in this engagement with respect to
5 507(b) motion that there has been significant
6 diminishment subsequent to October 1, 2007 in the value
7 of the Scopac timberlands?

8 A. I did not try to quantify the drop after
9 October 1, 2007, but certainly it would be -- that would
10 be the biggest component of the difference between the
11 petition date and the current date would be after
12 October 7, 2007. But I did not identify or try to
13 identify how much that drop would be.

14 Q. Have you described the basis for the two
15 opinions that you've reached in this engagement in the
16 proffer of James E. Fleming that has been marked as IT
17 Exhibit 1 and was served on June 28, 2008?

18 A. Yes.

19 Q. Do you have that exhibit with you on the
20 witness stand?

21 A. Yes, I do.

22 MR. SHIELDS: Your Honor, at this time
23 the Indenture Trustee offers IT Exhibit 1 into evidence.

24 THE COURT: That's his proffer?

25 MR. SHIELDS: Yes, Your Honor.

1 THE COURT: Is there any objection to the
2 proffer?

3 MR. NEIER: No objection, Your Honor.

4 MR. JONES: I'm sorry, Your Honor, just a
5 question. We received, I think, three different
6 versions of the proffer in the last two days. Which
7 version are we talking about?

8 MR. SHIELDS: The latest one.

9 MR. JONES: Okay. I don't have that one.
10 I it was e-mailed last night but I don't have a printer
11 with my Blackberry, Your Honor.

12 THE COURT: My guess is I don't have that
13 one either then if it was just last night because the
14 one I got, I got Monday.

15 MR. SHIELDS: I'm actually not aware that
16 one was served last night, but --

17 THE COURT: I'm not either.

18 MR. SHIELDS: Suffice it to say, Your
19 Honor, we'll have into the courtroom very promptly.

20 THE COURT: Let's not worry about that.
21 I mean, we're going to get all the proffers in and all
22 the evidence in.

23 MR. SHIELDS: Well, if counsel wants to
24 have a copy to use, we'll certainly provide one.

25 THE COURT: Let's make certain that the

1 official Court copy is the appropriate one.

2 MR. SHIELDS: Thank you, Your Honor.

3 Q. (By Mr. Shields) I have a couple of
4 preliminary questions about the appraisal work that you
5 did in disengagement relating to the Section 507(b)
6 motion before I go on and ask more detailed questions.
7 Specifically, when I refer in these questions and the
8 answers you've already given to the Scopac timberlands,
9 are you referring to both the commercial timberlands of
10 approximately 202 or 203,000 acres as well as what the
11 Court has heard referenced to before as the marbled
12 murrelet conservation areas that comprise about 6,600
13 acres?

14 A. That's correct.

15 Q. Okay. And any appraisal work that you did as
16 of the petition date that's described in your proffer,
17 did you actually prepare separate valuations for those
18 two parcels and then aggregate the values that you found
19 into the \$646 million value that you came up with as of
20 the petition date?

21 A. I analyzed both properties and developed a
22 contributory value for both of the components. My final
23 opinion of value, however, is combining that information
24 into one opinion of value for the entire Scotia Pacific
25 timberlands.

1 Q. All right. Let's go into the background of
2 this particular engagement. When I refer to "this
3 engagement," Mr. Fleming, I'm referring to the one in
4 which you were called subsequent to the Court's issuance
5 of its findings of fact and conclusions of law and were
6 asked to do additional work in this case, okay? That's
7 what I mean when I say "this engagement."

8 When were you returned -- pardon me. Retained
9 by the Indenture Trustee in connection with this
10 particular engagement that relates to your testimony
11 today and to the testimony that's described in your
12 proffer that's been marked as IT Exhibit 1?

13 A. It would be June 7th.

14 Q. And when you were contacted, what were you
15 generally asked to do?

16 A. Generally asked to appraise the property as of
17 the petition date and form an opinion relative to the
18 value between the petition date and the present.

19 Q. When you were engaged, were you -- first of
20 all, who contacted you and asked you to form expert
21 opinions in these -- in the areas you've described? Who
22 in specific?

23 A. Mark Worden with Fulbright & Jaworski.

24 Q. Okay. And when you were engaged on June 7,
25 2008, were you told why you were being asked to look at

1 these issues?

2 A. No.

3 Q. Were you -- at the time that you were engaged
4 on June 7, 2008, or at any subsequent time, did anyone
5 suggest to you what they hoped your analysis would end
6 up demonstrating in terms of values?

7 A. No.

8 Q. At any time in the course of completing your
9 analysis and work relating to the opinions you'll
10 testify to today and that are described in your proffer,
11 did anyone try to shape your opinions or in any way
12 influence your work or impinge upon your independent
13 professional judgment in this engagement?

14 A. Absolutely not.

15 Q. All right. I want to ask you about the first
16 opinion that you have expressed in your testimony, which
17 is your appraisal of the value of the Scopac timberlands
18 as of the January 18, 2007 petition date. I'll later
19 ask you about your general opinion that value of the
20 Scopac timberlands have dropped since October 1, 2007.

21 MR. SCHWARTZ: Your Honor, if I may,
22 we're already at ten minutes. I want to give
23 Mr. Shields a couple of minutes but it sounds like what
24 he just described to me --

25 THE COURT: You need to finish up.

1 MR. SHIELDS: I promise you, Your Honor,
2 I didn't realize I was going over and I can get it down
3 in two or three minutes.

4 THE COURT: All right.

5 MR. SHIELDS: I will also point out in
6 terms of cutting me a little slack that the ratio of
7 direct examination to pages in the proffer is really
8 very good here as compared to Mr. Krumholz for 20
9 minutes for a three-page proffer. I've got a 90-page
10 proffer I'm trying to give you an overview of.

11 THE COURT: I understand.

12 MR. KRUMHOLZ: I'm his partner and he
13 says that.

14 MR. SHIELDS: I'm sorry, I will move it
15 along.

16 Q. (By Mr. Shields) Now, do you consider the
17 work that you did in this engagement that relates to a
18 finding or expressing an opinion of value as of the
19 petition date to be an appraisal?

20 A. Yes.

21 Q. All right. And as such, does that mean that
22 it's subject to the professional standards for
23 appraisals that apply to you as an MAI appraiser or as
24 applicable to you under other groups that you're a
25 member of?

1 A. Absolutely.

2 Q. You attended the deposition of Richard LaMont
3 taken during the weekend of June 21 and 22, did you not?

4 A. Yes.

5 Q. And do you recall that he expressed the
6 opinion that what he did in this case was not an
7 appraisal, correct?

8 MR. SCHWARTZ: Your Honor, this is not
9 the right testimony. This is impeaching a witness who
10 hasn't been called yet. This isn't a summary of his
11 proffer.

12 MR. SHIELDS: Your Honor, it's not. It's
13 simply describing the nature of the work.

14 THE COURT: Ask the question. Go ahead.

15 Q. (By Mr. Shields) All right. Is that correct
16 that Mr. LaMont did not prepare an appraisal as you
17 understand it?

18 A. That was my understanding.

19 Q. All right. Now, you were here during the
20 opening statements yesterday, weren't you?

21 A. Yes.

22 Q. Do you recall the Court's question yesterday
23 inquiring as to whether a valuation prepared as of the
24 petition date should focus on what would have been known
25 to potential buyers of Scopac's timberlands at that

1 point in time; i.e., the date of the petition without
2 regard to subsequently learned facts or alternatively,
3 whether such an appraisal could take into account
4 subsequent events. Do you recall that?

5 A. Yes.

6 Q. All right. In that regard, what you consider
7 to be the appropriate time focus that should be adopted
8 in valuing Scopac's timberlands as of the January 18,
9 2007 petition date?

10 A. As an appraiser I try to put myself on the
11 date of value and immolate what a potential buyer would
12 consider at that point in time.

13 Q. And did you do that in your appraisal work for
14 the petition date valuation that you've done in this
15 case?

16 A. For the most part, yes.

17 Q. Okay. The "for the most part," does that
18 relate to the need to look at a little bit of post
19 January 8 pricing data to develop starting prices in
20 your discount cash flow analysis?

21 A. I did look at some sales with regard to the
22 delivered log prices for timber after the petition date.

23 Q. Okay. And in doing your appraisal of the
24 petition date value, did you reject as inappropriate,
25 inapplicable and not useful the cost approach to

1 valuation and the comparable sales approach?

2 A. I considered them, but I did not use them in
3 the final analysis.

4 Q. Did you not use them because you did not
5 consider them to have the capability of rendering a
6 meaningful indicator of value?

7 MR. SCHWARTZ: Your Honor, not only is he
8 well passed his time but he's completely leading the
9 witness in every single question.

10 MR. SHIELDS: That was allowed in the
11 last hearing.

12 THE COURT: You get to lead the expert
13 witnesses.

14 MR. SHIELDS: You don't want me to?

15 THE COURT: You can lead expert
16 witnesses. I mean, I think that's standard evidence. I
17 know this is bankruptcy court but --

18 MR. SHIELDS: The rules of engagement,
19 that's the way we've been doing it.

20 THE COURT: All right. So you've got one
21 more minute.

22 MR. SHIELDS: All right. One more
23 minute.

24 Q. (By Mr. Shields) Did you -- give the Court an
25 overview of why you -- your petition date valuation

1 ended up having a \$646 million number as compared to
2 your October 1, 2007 valuation having a \$605 million
3 number. What appeared to drive that difference?

4 A. Primarily the increase in -- or difference in
5 log prices. And also in my analysis, the harvest level
6 went up.

7 Q. One last question. In the course of your
8 work, did you run an alternative scenario in which you
9 assumed that the annual harvest rates on the Scopac
10 timberlands would have a 90 million board feet harvest
11 rate for the first five years, 95 million for year 6
12 through 9 and 100 million board feet thereafter and then
13 plug those harvest rate assumptions into some of
14 Mr. LaMont's assumptions about log prices and then do a
15 discounted cash flow analysis to determine what the
16 value of the timberlands would be as of the petition
17 date with that approach?

18 A. Yes.

19 Q. And what value would that alternative scenario
20 have produced?

21 A. \$668 million.

22 Q. All right. And that alternative scenario is
23 discussed in your proffer at paragraphs 187 and 188 and
24 appendix A, correct?

25 A. Correct.

1 Q. That is not, however, your opinion. Your
2 opinion of the value as of the petition date is \$646
3 million, right?

4 A. That's correct.

5 MR. SHIELDS: Your Honor, I pass the
6 witness. And I appreciate the leeway.

7 THE COURT: Now it's your witness.

8 MR. JONES: Your Honor, if I may, I just
9 wanted to correct myself on the record. Mr. Bolton has
10 informed me that what he gave me yesterday morning is,
11 in fact, the current proffer and I apologize for my
12 confusion.

13 THE COURT: All right.

14 MR. SCHWARTZ: Good morning, Your Honor,
15 Steve Schwartz on behalf of Winston & Strawn on behalf
16 of Marathon.

17 CROSS-EXAMINATION

18 BY MR. SCHWARTZ:

19 Q. Good morning, Mr. Fleming. How are you?

20 A. Good morning. Fine.

21 Q. Now, Mr. Fleming, you previously testified at
22 the confirmation hearing that it was your opinion that
23 the value of the timberlands, and for purposes of this
24 discussion I'm going to talk about timberlands as
25 meaning both the commercial timberlands and the MMCAs;

1 is that okay?

2 A. Yes.

3 Q. Okay. You valued the timberlands at \$605
4 million as of October 1st, 2007, correct?

5 A. Yes.

6 Q. Okay. Now, you said you've read at least some
7 of the Judge's findings on -- related to your work. Did
8 the Judge make any findings that your value as of
9 October 1st was correct?

10 A. He apparently dis -- well, I don't know. I
11 don't know the answer to that.

12 Q. Do you know if the Judge made any findings
13 with regard to any date for valuation other than as of
14 the confirmation date?

15 A. I don't believe I know that, no.

16 Q. And so your testimony that -- on direct that
17 there has been a decline in value since October 1st,
18 2007, that's based on your valuation as of October 1st,
19 2007, correct?

20 A. That's correct.

21 Q. Okay. So if that valuation was not accepted
22 by the Court, then your opinion would not necessarily
23 follow, would it?

24 A. He tended to imply that that was all right
25 date but I don't know if he found that.

1 Q. And you -- you have no opinion as to value,
2 any specific opinion as to value on any specific date
3 after October 1st, 2007, correct?

4 A. That's correct.

5 Q. In fact, you said on direct that your opinion
6 was the value, however, since October 1st, 2007 has
7 significantly declined. Isn't that what you said on
8 direct?

9 A. Yes.

10 Q. But you've done absolutely no analysis to make
11 that assessment, have you?

12 A. Other than just -- no analysis, no.

13 Q. And so you have no basis on which to reach any
14 opinion as to whether it's decline, the value has
15 declined or increased or stayed the same since October
16 1st, 2007, do you?

17 A. I'm aware of prices. I have data in my office
18 that have come in. I have other indicators that suggest
19 that prices have certainly gone down since October 1 of
20 2007.

21 Q. And just so we're clear, when you talk about
22 prices, you mean log prices, right? You're not talking
23 about the prices for timberlands?

24 A. I'm primarily talking about log prices, yes.

25 Q. And there are a lot of other factors in

1 determining the value of the timberlands other than
2 prices that you used in your model and every other
3 appraiser has used in their model, right?

4 A. That's correct.

5 Q. And you've done absolutely no analysis of any
6 of those other factors to make an assessment to whether
7 there's been a value change between October 1, 2007 and
8 the present?

9 A. That's correct.

10 Q. Now, you've just testified that the primary
11 driver of your view that the value has -- was \$646
12 million as of the petition date and why that's higher
13 than the Judge found as of confirmation was log prices,
14 correct?

15 A. Log prices and in my analysis, the harvest
16 level increased with regard to the valuation of the
17 commercial timberlands.

18 Q. And when I asked you that question at your
19 deposition, you didn't -- you didn't know what was
20 driving the increase in value, did you?

21 A. Certainly I knew.

22 MR. SCHWARTZ: Would you put up Fleming's
23 deposition, page 57.

24 Q. (By Mr. Schwartz) Mr. Fleming, can you see
25 the screen?

1 A. I'll look at the screen. It's easier.

2 Q. If you'd like a hard copy, I can give you one.

3 It's up to you. I asked you at page 57, line 22,
4 question: "Is the price change the biggest single
5 factor that affected the valuation?" Answer: "I
6 haven't -- could be. I haven't looked at that to see
7 what the volume impact would be." Did I read that
8 correctly?

9 A. I'm sorry, I didn't -- no. I didn't follow
10 you.

11 Q. Okay. Are you on page 57, line 22?

12 A. I was.

13 Q. Do you have it now?

14 A. I can't see the --

15 Q. I'll get you a hard copy.

16 A. Well, I don't have a page number on what I
17 see.

18 MR. SCHWARTZ: May I approach, Your
19 Honor.

20 THE COURT: You may.

21 MR. SCHWARTZ: Thank you.

22 Q. (By Mr. Schwartz) Tell me when you're at page
23 57, Mr. Fleming.

24 A. I'm on it.

25 Q. Okay. And do you see line 22?

1 A. Yes.

2 Q. My question was: "Is the price change the
3 biggest single factor that affected the valuation?" And
4 your answer was "I haven't -- could be. I haven't
5 looked at that to see what the volume impact would be."
6 Was that testimony at your deposition correct at the
7 time?

8 A. I hadn't tried to determine which was the
9 biggest single factor that affected the valuation,
10 that's correct.

11 Q. Okay. And your deposition was taken about
12 nine days ago on a Sunday, actually, Sunday June 22nd,
13 correct?

14 A. Correct.

15 Q. What analysis have you done since your
16 deposition to make the determination that prices was the
17 biggest single factor?

18 A. I think I testified that it was prices and the
19 change in the harvest level that made the difference.
20 You didn't ask me which was the biggest single factor
21 that affected the valuation.

22 Q. That is exactly my question on page 57, isn't
23 it?

24 A. That's correct.

25 Q. And you didn't say -- you said you didn't know

1 essentially, correct?

2 A. Well, I would say it was probably the log
3 prices, but at the time I really hadn't -- it wasn't
4 something I dealt with.

5 Q. Right. So what I'm asking you is what have
6 you done since your deposition in order to testify as
7 you did on direct that prices was the single biggest
8 factor?

9 A. I think I testified on direct that it's prices
10 and the change in the harvest level.

11 Q. Okay. What have you done since your
12 deposition to determine that it was prices and the
13 harvest level?

14 A. Well, I knew that before.

15 Q. Okay. But you didn't answer that way in your
16 deposition, did you?

17 A. You asked whether -- what's the change in the
18 biggest single factor and I did not know.

19 Q. Do you know today?

20 A. I would say it's probably prices.

21 Q. Okay. And what's that based on?

22 A. I haven't done an analysis. I'm just
23 guessing.

24 Q. You're guessing. Okay. Now, you've talked
25 about the decline between October and the present and

1 you talked about the log prices during direct.
2 Mr. Shields asked you about that. But when you were
3 here the last time during the confirmation hearing you
4 were asking the Judge to accept your valuation of \$605
5 million. You didn't consider the changes in prices from
6 October until the confirmation date, did you?

7 A. No. I appraised the value of the property as
8 of October 1, 2007.

9 Q. Right. And at that time, you hadn't even
10 looked at what the trend in prices had been since
11 October to the confirmation date, correct?

12 A. I was aware that prices went down, but I had
13 not tried to apply them to the subject property and
14 re-appraise the Scotia Pacific timberlands at some
15 subsequent date.

16 Q. Right. But now, now you've done some work on
17 prices, right, going backwards to January of 2007?

18 A. Not really.

19 Q. You haven't?

20 A. I get data that comes into my office. I think
21 we interviewed somebody in a deposition with regard to
22 lower prices. And that's what I'm basing my opinion on.

23 Q. Now, the methodology that you used to reach
24 your conclusion that the timberlands are worth \$646
25 million on the petition date is the exact same

1 methodology you used to determine that, in your opinion,
2 the value was \$605 million on October 1st, 2007,
3 correct?

4 A. More or less.

5 Q. More or less? Isn't it exactly the same?

6 A. Pretty -- yes.

7 Q. It's exactly the same, correct?

8 A. Methodology?

9 Q. Yes, methodology.

10 A. I'm sorry. Yes.

11 Q. Okay. And that -- the analysis that you had
12 done as of October, I think as you indicated, was not
13 accepted by the Court, right?

14 A. That's correct.

15 Q. In fact, the Court described it as having
16 "significant flaws and accorded it little weight"; isn't
17 that correct?

18 A. I don't really recall that, but I know he
19 found some problems with it.

20 MR. SCHWARTZ: Can you put up MX 155.

21 THE COURT: Let's move on.

22 MR. SCHWARTZ: Okay. Thank you, Your
23 Honor.

24 Q. (By Mr. Schwartz) Now, let's just talk about
25 some of the factors in your methodology before we get to

1 your specifics on your petition date value. You again
2 used a ten year model, not a 50 year model, correct?

3 A. That's correct.

4 Q. And you did not use any computerized models
5 other than your Excel spreadsheet, right?

6 A. That's correct.

7 Q. Now, you mentioned the last time as of
8 October, you had not looked at the GIS database,
9 correct?

10 A. Well, I had -- I had information -- the data
11 that was provided to me by Scopac foresters was based on
12 GIS -- their GIS database.

13 Q. That's not my question. My question is
14 whether you looked at the GIS database.

15 A. I didn't have any reason to look at it. And
16 in fact, as I recall --

17 THE COURT: It really would be better
18 just to answer his questions. If your lawyer wants to
19 say did you have a reason to look at it, he'll do that.
20 He asked you if you looked at it. If you didn't, just
21 say that. Otherwise it sounds like you're worried that
22 I'm going to somehow think bad if you answer it some
23 other way. It sounds bad when you say that. If we had
24 a jury, it would sound really bad. But go ahead.

25 Q. (By Mr. Schwartz) So did you look at it?

1 A. No.

2 Q. And have you looked at it since the
3 confirmation hearing until today?

4 A. No.

5 Q. And as you did before you only used one
6 harvest scenario, right?

7 A. Yes.

8 Q. One harvest rate?

9 A. Yes. In the final analysis.

10 Q. Right. And the harvest rate that you used for
11 your October 1 valuation was 81 million board feet for
12 the first nine years, correct?

13 A. That's correct.

14 Q. And this time you used for your petition date
15 value 82 million board feet for the first nine years,
16 correct?

17 A. That's correct.

18 Q. And are you aware that Scopac in 2007 only
19 harvested 74 million board feet?

20 A. I am not sure how much. That number seems
21 familiar for the entire year.

22 Q. Right. For 2007?

23 A. I believe so.

24 Q. And do you know that they're projecting to
25 harvest approximately 75 million board feet for 2008?

1 A. I have heard that. I haven't seen it in
2 writing.

3 Q. But your analysis is 82 million board feet
4 each year, almost ten percent higher than the company's
5 actuals and projection, correct?

6 A. That's correct. I'm appraising the property
7 as of January 18th, 2007.

8 Q. We'll come to the specifics of that later.
9 Now, last time when you testified you said that you did
10 not do any specific analysis with respect to the
11 adjacency limitations to determine whether your model,
12 your harvesting would comply with that; is that right?

13 A. I considered the adjacency rules, if we want
14 to call them that, within the forest practice rules,
15 yes.

16 Q. But you did not do any analysis of the
17 individual stands in the timberlands to determine which
18 could be harvested consistent with the adjacency rules,
19 correct?

20 A. No.

21 Q. And you haven't done that for purposes of your
22 current valuation as of the petition date, right?

23 A. No, but I still considered the adjacency
24 issues.

25 Q. And as of -- in your last valuation about 25

1 percent of your harvest was of Doug Fir, correct?

2 A. Approximately.

3 Q. And that's still true now for your January
4 1st, 2007 analysis, correct?

5 A. It should be.

6 Q. It should be. Do you know?

7 A. I haven't calculated it.

8 Q. You haven't calculated it? Isn't that
9 relevant to your appraisal analysis?

10 A. I just don't know what the total is. I've
11 estimated the volume, I just don't know what the
12 estimate is with regard to the total volume, the
13 harvestable component.

14 Q. You haven't broken it down in your analysis by
15 species, right?

16 A. Correct.

17 Q. So you've made the numbers, you just don't
18 remember what it is?

19 A. That's correct.

20 Q. Okay. Well, assume for me that it's 25
21 percent. We can show it to you later, the math. You
22 know that the mill is not harvesting Doug Fir at the
23 current time, correct?

24 A. Excuse me?

25 Q. That the Scopac mill is not harvesting Doug

1 Fir. Are you aware of that?

2 A. As of today?

3 Q. Yes.

4 A. In 2008?

5 Q. Yes.

6 A. Yes. I believe they are not. As I
7 understand, they're just cutting redwood right now.

8 Q. Right. And that was true back at the time you
9 testified at confirmation also as well, correct?

10 A. I believe that's true.

11 Q. Now, another factor in your analysis was the
12 discount rate to be applied, right? That's an important
13 factor in your valuation?

14 A. Yes.

15 Q. And the last time when you testified, you
16 testified that in coming up with the discount rate, you
17 did not consider any alternative timber transactions,
18 correct?

19 A. With regard to the -- I considered them, but I
20 did not use them in the final analysis.

21 Q. You did not use any alternative timber
22 transactions in trying to come up with a discount rate
23 back when you testified at confirmation, correct?

24 A. Not in the final analysis.

25 Q. And that's true with respect to your valuation

1 as of the petition date again, correct?

2 A. That's correct.

3 Q. And the same is true with respect to housing
4 REITs and timber REITs, you didn't use them the last
5 time and you didn't use them again?

6 A. That's correct.

7 Q. And the last time you testified, you applied a
8 3.5 percent price appreciation every single year to log
9 prices, correct?

10 A. Yes.

11 Q. And you did that again?

12 A. Excuse me. I'm sorry. Maybe I --

13 Q. Let me repeat that because I know where I made
14 my mistake in the question. For young growth redwood,
15 you applied a 3.5 percent price appreciation every
16 single year, year one through year nine, right, of your
17 analysis?

18 A. No.

19 Q. Tell me what you did.

20 A. For redwood I used a 3.5 price appreciation,
21 both young growth and old growth.

22 Q. Okay. I was limiting it to young growth but
23 thank you for that clarification. So you used 3.5
24 percent for -- price appreciation, that's log prices,
25 right, for young growth redwood and old growth redwood,

1 correct?

2 A. Yes.

3 Q. And you used that again in your analysis for
4 the petition date valuation, correct?

5 A. I did another analysis and I still selected
6 the 3.5 percent, yes.

7 Q. And you used the same discount rate that you
8 used the last time, correct?

9 A. Yes.

10 Q. And you used the same capitalization rate that
11 you used the last time, correct?

12 A. Correct.

13 Q. And you used the same cost structure that you
14 did the last time?

15 A. For the most part.

16 Q. For the most part?

17 A. There are some small changes regarding log
18 costs.

19 Q. I think you said in your deposition --

20 A. It was pennies.

21 Q. That it was pennies in your deposition?

22 A. It was minimal, yes.

23 Q. Now, I just want to make sure I got this
24 right. I think Mr. Shields asked you this, but you
25 didn't start doing any work on this matter, meaning the

1 507(b) claim until June 7th, the day after the Court
2 issued its findings of fact and conclusions of law,
3 correct?

4 A. That's correct.

5 Q. Okay. So were you even consulted in any way
6 about a petition date valuation prior to May 1st, 2008
7 when the Indenture Trustee filed its motion for a
8 super-priority claim?

9 A. Not that I recall.

10 Q. Now, on direct Mr. Shields asked you a little
11 bit about when you're doing an appraisal back in time,
12 what you do and whether you put yourself in the position
13 you were in January of 2007, do you consider subsequent
14 events, correct?

15 A. Correct.

16 Q. And you said that, for the most part, I think
17 your answer was, you put yourself back into January 2007
18 time period, correct?

19 A. That's correct.

20 Q. Okay. And I asked you at your deposition
21 whether that would be referred to as a retrospective
22 appraisal, correct?

23 A. It would be a retrospective appraisal.

24 Q. At your deposition you said --

25 A. As of January 18, 2007.

1 Q. And at your deposition you said no, that it
2 wouldn't be considered retrospective appraisal, would
3 you?

4 A. I don't know why I would have said that. It's
5 still market value but it would be considered a
6 retrospective appraisal.

7 Q. Can you look at page 43 of your deposition.
8 You have the hard copy if that's easier.

9 A. 43. Yes.

10 Q. Line 13 I asked the question "would you
11 consider this to be a retrospective appraisal? And your
12 answer was "not really, but I don't know if it's
13 technically in the category or not." Was that statement
14 true at the time of your deposition?

15 A. Technically almost every appraisal I do is a
16 retrospective appraisal.

17 Q. But that's not what you said in your
18 deposition, right?

19 A. Well, I'm not sure that I understood the
20 question exactly, but in retrospect, I would say it was
21 definitely a retrospective appraisal.

22 Q. Let's talk a little bit -- well, let me step
23 back a second. Have you done anything between your
24 deposition and today to ascertain whether this does fit
25 within the definition of a retrospective appraisal?

1 A. It is a retrospective appraisal. I mean, it's
2 almost -- if you look at the date of your report and the
3 date of value, almost every one would be considered a
4 retrospective appraisal in the sense that there is a
5 couple days difference.

6 Q. That wasn't my question. My question is:
7 Have you done anything since your deposition to
8 determine whether what you have done for a valuation as
9 of the petition date is considered a retrospective
10 appraisal?

11 A. It's still a market value. It's still an
12 opinion of market value.

13 THE COURT: You need to answer the
14 question that you think he's asking. It's a simpler
15 one. He just asked if you did anything to check to see
16 if it was a retrospective appraisal between your
17 petition and today, not whether it is or not, not
18 whether you changed your mind, just have you checked
19 into it.

20 THE WITNESS: Yes, Your Honor. I looked
21 up the definition of retrospective appraisal.

22 Q. (By Mr. Schwartz) Thank you. Now, let's talk
23 a little bit about discount rates. As part of your
24 normal business, you've been an appraiser for a long
25 time, correct, based on your direct testimony?

1 A. Yes.

2 Q. Okay. In your normal business, do you follow
3 trends and discount rates?

4 A. Not normally.

5 Q. Do you follow trends and discount rates
6 specifically for timberland properties?

7 A. No.

8 Q. Do you have any view or opinion as to how
9 discount rates for timberland properties have changed
10 over the past one to two years?

11 A. I haven't made any determination for that, no.

12 Q. Did you look into it at all?

13 A. I know what the difference between the two
14 dates of value that I analyzed.

15 Q. Well, you used the same discount rate on the
16 two dates, right?

17 A. Yes.

18 Q. And those dates are approximately nine months
19 apart, correct?

20 A. On the valuation of the Scotia Pacific
21 timberlands I used the same discount rates, yes.

22 Q. Right. And on the two dates, January and
23 October 2007, which is about nine months apart, correct?

24 A. Yes.

25 Q. Okay. So in determining to use the same

1 discount rate, did you consider or look into what the
2 trends and discount rates had been over the past year or
3 two years or any period?

4 A. I didn't have any trends in California
5 timberland to look at.

6 Q. What about trends outside of California?

7 A. I did not look at any.

8 Q. What about trends and discount rates not for
9 timberlands specifically, but just generally based on
10 what's going on in the market?

11 A. I'm not sure what you mean by a discount rate
12 in this case. I analyzed the discount rate for the
13 subject property.

14 Q. Okay. And I guess since you don't follow, do
15 you know whether there are trends and discount rates
16 generally?

17 A. No.

18 Q. Okay. As part of your appraisal analysis, do
19 you sometimes contact other expert appraisers to get
20 their views to see if what you have done or are
21 considering doing is consistent with their views?

22 A. Occasionally.

23 Q. Did you at any time contact anybody -- any
24 other experts to get their view on what the discount
25 rate -- an appropriate discount rate would be for these

1 timberlands or what the trend in discount rates has
2 been?

3 A. No, but most of them don't appraise timber in
4 California. I focused on California primarily.

5 Q. And is it your view that it's just improper to
6 look at any other timberland property outside of
7 California for any purpose in doing an appraisal?

8 A. No.

9 Q. Let me --

10 THE COURT: This is now about 11 o'clock,
11 I'm going to take a short break, maybe ten minutes. I
12 have to break at lunchtime and I'm going to make a
13 ruling at 2 o'clock in the Asarco case, so the odds are
14 we aren't going to start until about 2:15, maybe as late
15 as 2:30 but I would like you to be back when we break
16 for lunch by 2:15. We're not breaking for lunch now.

17 (A recess was taken.)

18 THE CLERK: All rise.

19 THE COURT: Be seated. Go ahead.

20 MR. SCHWARTZ: Thank you, Your Honor.

21 Q. (By Mr. Schwartz) Mr. Fleming, when we broke
22 we were talking about trends in discount rates and I
23 want to continue on that subject for a few minutes. You
24 were aware -- you were in the courtroom just now when
25 Mr. Radecki testified, correct?

1 A. Yes.

2 Q. And so you heard him say that rates generally
3 have been declining over the past year to two years; is
4 that right?

5 A. He was talking about certain rates.

6 Q. And would the rates he was discussing have an
7 impact on the discount rate, in your view?

8 A. Not necessarily.

9 Q. And why is that?

10 A. I'm not looking at the short-term rates
11 necessarily or mortgage rates or whatever.

12 Q. What about what other experts in this case
13 have said, did you look at that in determining whether
14 to adjust your discount rate at all?

15 A. Which other experts?

16 Q. Any other experts.

17 A. Back in the hearing, confirmation hearing
18 or --

19 Q. Yes.

20 A. Not that I recall.

21 Q. Okay. Let's take a look at what some of those
22 experts say and see what impact they may or may not have
23 on you. Exhibit 161, page 30. This, Mr. Fleming, is
24 the report of Mr. Yerges. Now, you were here when
25 Mr. Yerges testified at the confirmation hearing,

1 correct?

2 A. I believe so.

3 Q. But you -- part of your proffer at that time
4 commented on Mr. Yerges' report, right?

5 A. I had read his report, yes.

6 Q. Okay. Let's take a look at page 30 and the
7 fourth paragraph beginning "most" right above the chart.
8 And it reads -- can you see it on the screen?

9 A. Yes.

10 Q. "Most participants observed that the discount
11 rates have trended down over the last three to five
12 years." That was Mr. Yerges' opinion. Do you have any
13 reason to disagree with that opinion?

14 A. I don't know what it's based on. I'm
15 appraising my property in California.

16 Q. And Mr. Yerges, this is his report on his
17 appraisal of the very same property, right?

18 A. That's correct.

19 Q. Okay.

20 MR. SCHWARTZ: Excuse me, Your Honor.

21 Q. (By Mr. Schwartz) If you read -- I'm sorry.
22 If you were just to take a look, you could see that
23 Mr. Yerges' statement there is based on his chart below
24 it of a survey of other timberland investors. Do you
25 see that?

1 A. That's correct.

2 Q. Okay. So it does indicate what it's based on.
3 Now, given that, what he has done, do you have any
4 reason to disagree with his statement about discount
5 rates declining over the last three to five years?

6 A. I'm not -- I don't have any opinion of that.
7 I don't know. I haven't really studied what he has done
8 in there.

9 Q. You did review his prior report, right?

10 A. Generally.

11 Q. Okay. Let's take a look at Exhibit 162. Now,
12 this is the report of Houlihan Lokey and Glenn Daniel.
13 Now -- from the confirmation hearing, right? Mr. Daniel
14 was -- and Houlihan were an expert for the Indenture
15 Trustee at the confirmation hearing, correct?

16 A. Correct.

17 Q. And that's who you are an expert for in this
18 case, right?

19 A. Yes.

20 Q. Let's take a look at page 47. The very last
21 bullet titled "appropriate discount rates." Do you see
22 that on the screen? Mr. Fleming, can you see that?

23 A. Yes, I do now.

24 Q. Okay. And that says "further analysis of the
25 weighted average cost of capital per comparable tax

1 efficient and nontax efficient timber companies as well
2 as an analysis of the internal rate of return required
3 by investors in this asset class has resulted in a
4 reduction of applied discount rate and cap rate to 10
5 and a half and 7 percent respectively." Do you see
6 that?

7 A. Yes.

8 Q. Do you have any reason to disagree with
9 Mr. Daniel that there has been a decline in the discount
10 rate recently?

11 A. I'm not sure what he has here. I don't see a
12 reference to change over time.

13 Q. Let's take a look at one more document, and
14 this is Exhibit 100, page 13. This is a report prepared
15 by Hancock Timber. Do you know who Hancock Timber is?

16 A. Generally.

17 Q. Who is Hancock Timber?

18 MR. SHIELDS: Your Honor, I'm going to
19 object to this document as being hearsay and no
20 predicate laid for being used.

21 MR. KRUMHOLZ: Your Honor, just in
22 context, I'm taking Mr. LaMont and this is one of those
23 other sales materials that we've been talking about,
24 PowerPoints, things of that nature.

25 THE COURT: I'm not sure. What are we

1 talking about?

2 MR. SCHWARTZ: He said that's right.

3 THE COURT: Provide some sort of
4 foundation?

5 MR. SHIELDS: I don't believe the witness
6 has ever seen it.

7 MR. SCHWARTZ: Well, let me see if I can
8 apply the foundation. If I can't, we'll move on.

9 Q. (By Mr. Schwartz) First let me ask you, do
10 you know who Ken Hancock is?

11 A. They're a company. I'm not sure exactly the
12 classification.

13 Q. They're a timberland company; isn't that
14 right?

15 A. For purposes here, I guess they own timberland
16 or somehow manage timberland, yes.

17 Q. Right. In fact, they're one of the bigger
18 timberland companies in the area; isn't that right?

19 A. I'm not that familiar with them. In what area
20 are you talking about?

21 Q. In the California Pacific Northwest area?

22 A. I don't know that you can -- normally they
23 don't include California.

24 Q. Okay. Let's take them separately. Do you
25 know whether they're one of the bigger timberland

1 companies in California?

2 A. No, they're not.

3 Q. Do you know if they're one of the bigger
4 timberland companies in the Pacific Northwest?

5 A. No, I don't.

6 Q. You don't know?

7 A. Not particularly, no.

8 Q. Okay. Now, you were at Mr. LaMont's
9 deposition, correct?

10 A. Last week?

11 Q. Yes.

12 A. Recently?

13 Q. Recently.

14 A. Yes.

15 Q. Okay. And you recall Mr. LaMont was shown
16 this document. Do you remember that?

17 A. He was shown this document?

18 Q. He was asked about this document.

19 MR. SHIELDS: Your Honor, I object to
20 this. If he's going to prove, somehow authenticate this
21 document and lay a predicate for its admissibility, it
22 has to be based on what Mr. Fleming has done with this
23 document or seen or whatever, not what he said in a
24 deposition and heard them hand to their own expert. The
25 time -- this document is their expert. I object to

1 this.

2 MR. SCHWARTZ: Your Honor, I can put it
3 in through our expert but that later in the case but I'm
4 not offering it for admission. I'm asking if he agrees
5 with the statement. And if he's an expert I can ask --

6 THE COURT: Ask him just the statement.
7 Do you agree with it. He doesn't have to see the
8 document. What statement?

9 MR. SCHWARTZ: Okay.

10 Q. (By Mr. Schwartz) Quote -- I'm quoting from
11 MMX 100, page 13.

12 MR. SHIELDS: It's the same thing.

13 THE COURT: I mean, ask the question.
14 You're trying to get the document in somehow rather than
15 the question. Is it not true that, and you can read it.

16 Q. (By Mr. Schwartz) Mr. Fleming, do you agree
17 with the following statement: "Recent increases in U.S.
18 timberland property values can be explained fully by
19 lower discount rates."

20 A. I have no opinion on that.

21 Q. Okay. Now, when you did your discount rate
22 and came up with a 9 percent discount rate, that's what
23 you used, correct?

24 A. Correct. But for the valuation of the
25 commercial timberlands.

1 Q. Yeah, for the commercial timberlands. You
2 used 9 percent, correct?

3 A. Correct.

4 Q. And you've got there -- you started with the
5 BAA corporate bond rate, correct?

6 A. That's a benchmark that I use, but I consider
7 all of the data. I don't know that that's where I
8 start, but I certainly use the BAA bond level as my
9 starting point or my representation of market risk, yes.

10 Q. And why do you use the BAA rate as your
11 starting point?

12 A. It's a medium quality bond. It's -- data is
13 relatively available. And it includes a certain amount
14 of risk. It's not a junk bond level. It's a medium
15 rate, but it does have risks. And so that seems to be,
16 in my analysis of what is available to me, that's the
17 best one to use.

18 Q. Now, do you know if -- what types of
19 investments are made -- comprised of BAA corporate
20 bonds?

21 A. Not necessarily.

22 Q. You don't know if there are any timber
23 investments included in there, do you?

24 A. Not -- I'm not certain, no.

25 Q. And you didn't look at any timber indices, did

1 you, in determining whether the -- what discount rate to
2 use?

3 A. No, because I'm valuing property in
4 California, specific property, and I generally don't use
5 them.

6 Q. And BAA corporate bonds that you use, are
7 those investments related to property in California?

8 A. They're alternative investments that could be
9 used by an investor. And it gives me an understanding
10 of what a benchmark interest rate might be for the
11 purpose of my analysis.

12 Q. That wasn't my question. My question was
13 whether the investments that made up the BAA corporate
14 bonds that you use are located in California.

15 A. I don't know that.

16 Q. So you don't use timber indices because
17 they're not necessarily in California; is that what you
18 said? But you use corporate bond rates that you have no
19 idea whether they have properties in California?

20 A. Yeah. The indices normally, I've seen,
21 include all parts of the United States. And in fact,
22 they may not have any properties from California.

23 Q. And that may be true of the corporate bond
24 rate, true, you don't know?

25 A. I would assume there's some California bonds

1 in there.

2 Q. But you have no way of knowing?

3 A. I have no way of knowing.

4 Q. Now, part of the purpose of the discount rate
5 is to reflect alternative investments, correct?

6 A. I'm sorry?

7 Q. Part of the purpose of a discount rate is to
8 reflect alternative investments; is that right?

9 A. I look at alternative investments as part of
10 the process in estimating my discount rate, yes.

11 Q. Right. And in doing that for this case, you
12 did not use any alternative timber investments, correct?

13 A. I base my analysis primarily on the level of
14 BAA bonds as an indicator of the market risk aspect, the
15 component of my discount rate.

16 Q. Mr. Fleming, I don't think that answered my
17 question. My question was whether you used any timber
18 investments, looked at and actually used timber
19 investments in determining what discount rate to use.

20 A. Unless they're involved in the BAA bond
21 average, I guess the answer is no.

22 Q. And you don't know if they are or not?

23 A. I don't know if they are or not.

24 Q. Now, in general in -- well, we talked about
25 rates. Let's take a look at Exhibit 171, if we can.

1 This is your chart, correct, of rates? It may be a
2 little hard to see on the screen. I can give you a hard
3 copy if you'd like.

4 A. I can see it all right.

5 Q. Okay. This is a document that you provided to
6 us, correct?

7 A. I have provided some of these, yes.

8 Q. Okay. And if you look at the -- you used a
9 ten-year projection period, right?

10 A. That's correct.

11 Q. And during the bankruptcy period, if you look
12 at the ten-year treasury rate from this chart that you
13 produced, it went down by about 100 basis points,
14 correct?

15 A. I need the second half. I can't see the
16 screen. The books are in front of me. I need it on the
17 screen here, the second half of that page. Thank you.
18 I'm sorry, would you repeat the question? I didn't have
19 the right half of the page on my screen.

20 Q. Okay. I'll reask the question. During the
21 ten -- the period of this bankruptcy case, the ten-year
22 treasury rate went down approximately 100 basis points,
23 according to the chart you provided, correct?

24 A. Which period are you referring to?

25 Q. The bankruptcy period. Your chart goes from

1 January of '07 to March of '08, so it doesn't quite go
2 to the end of the bankruptcy period. But through March
3 of '08 it's 100 basis points decline, correct?

4 A. Let's just say roughly.

5 Q. And that would be -- if you were using the
6 ten-year treasury rate, that would be a one percent
7 difference in the discount rate between January and the
8 end of the bankruptcy period, correct, or at least
9 March?

10 A. That's a representative of a risk-free rate,
11 yes.

12 Q. But you didn't use the ten-year treasury rate?

13 A. No, I used the BAA bond level.

14 Q. Now, you're aware of how Mr. LaMont did his
15 discount rate analysis, right?

16 A. I guess generally.

17 Q. You're aware that he looked at what he
18 believed were comparable timber transactions to see what
19 the discount rates used in those cases were?

20 A. I've seen a little of the data that's in his
21 report.

22 Q. The same data that was in his report, it's the
23 same report from the confirmation hearing, correct?

24 A. If that's what you're referring to.

25 Q. It is.

1 A. I mean, I'm not trying to be difficult. It
2 seems like it might be different.

3 Q. Well, Mr. LaMont can explain that. But it was
4 your view that that was not an appropriate method to
5 come up with a discount rate, right?

6 A. Not for what I'm -- I'm appraising the
7 property, the subject property in California.

8 Q. Go ahead. I'm sorry.

9 A. And I'm not saying I wouldn't consider those
10 sales. I did not consider them. But if they're
11 available, I would have considered them.

12 Q. Okay. Well --

13 A. I don't think the representer would develop a
14 meaningful indicator for me to appraise a property in
15 California.

16 Q. Let's take a look at Exhibit 97, which has --
17 which is Mr. LaMont's proffer and then his report is
18 attached to it. And if we can go to page 44 -- 42, I'm
19 sorry, of his report.

20 MR. KRUMHOLZ: If it has anything to do
21 with his PowerPoints?

22 MR. SCHWARTZ: No, it's his report.

23 MR. KRUMHOLZ: Is it referencing -- this
24 is the '08 report?

25 MR. SCHWARTZ: It's his report from the

1 confirmation hearing.

2 MR. KRUMHOLZ: Thank you.

3 Q. (By Mr. Schwartz) See his table 12. And
4 again, if you need a hard copy, I can provide it.

5 A. I can see it on the screen.

6 Q. And these are the comparable sales that
7 Mr. LaMont used to arrive at his discount rates,
8 correct?

9 A. I believe so.

10 Q. Now, did you make any assessment of any of
11 these transactions to determine whether they were
12 comparable for purposes of using as a baseline for a
13 discount rate?

14 A. No.

15 Q. Do you have any opinion on whether they're
16 comparable for purposes of a discount rate analysis?

17 A. They're not.

18 Q. Why do you think they're not?

19 A. They're in Oregon, Washington, they have
20 different species, there's no redwood. There's a number
21 of different variables involved in the analysis.

22 Q. And the fact that they're in Oregon and
23 Washington as opposed to California, why does that make
24 them, in your opinion, not comparable?

25 A. In some ways it would be a different market.

1 Q. And you're aware that Mr. LaMont made an
2 adjustment for that by adding a percentage point to
3 adjust for the market in California, correct?

4 A. Yes.

5 Q. Now, isn't it standard practice in the
6 appraisal industry to get discount rates by extracting
7 them from comparable sales?

8 A. You can make adjustments, but that doesn't
9 mean you're going to end up with a meaningful indicator
10 of value.

11 Q. And you didn't do any analysis to figure out
12 whether these provide an indicator of value, right?

13 A. I didn't consider these sales specifically.
14 I'm aware of a couple of them, but I did not analyze
15 them for purposes of my appraisal.

16 Q. You didn't consider them at all?

17 A. Not specifically.

18 Q. In fact, not generally either? I mean, you
19 didn't even know about these transactions, did you?

20 A. I knew of one of them.

21 Q. Which one?

22 A. Hamilton.

23 Q. Did you consider that as a possible comparable
24 for doing discount rate analysis?

25 A. Not in this case.

1 Q. And that's because it's located in a different
2 state?

3 A. Different state, different timber, different
4 circumstance.

5 Q. So did you look for comparable sales in
6 California?

7 A. Yes, I did.

8 Q. And you couldn't find any?

9 A. Well, there were some sales.

10 Q. But you didn't consider comparable?

11 A. No, not after my analysis. I didn't think I
12 could -- that I would develop a meaningful indicator to
13 use them in my analysis of a discount rate.

14 Q. So in this whole country, you could not find
15 one sale of timberland property that you considered
16 comparable for purposes of even a starting point for a
17 discount rate analysis?

18 A. That's correct. This is a unique property
19 that we were trying to appraise.

20 Q. And it's unique because it has redwood on it?

21 A. That's one reason.

22 Q. And did you look at any other sales of
23 redwoods, any other transactions regarding redwood
24 properties?

25 A. Like I indicated, I had made a search for

1 comparable sales in the area, including ones that had --
2 that included redwood. In my final analysis, due to the
3 differences between the aspects of those sales and the
4 Scotia Pacific timberland that they would not generate a
5 meaningful indicator.

6 Q. Could we go to page 64 of Mr. LaMont's report,
7 particularly that chart. Do you have that chart in
8 front of you, Mr. Fleming, table 17?

9 A. Yes, I do.

10 Q. And those are comparables -- that's a
11 comparable sales summary that Mr. LaMont provided,
12 right?

13 A. I believe this is from his report, yes.

14 Q. Okay. And there are eight transactions
15 listed. Those are all in California, right?

16 A. Yes.

17 Q. And do they all involve redwood?

18 A. I'm not sure about the Pacific Resource
19 Property. I'm sorry, the Pioneer -- I believe they do,
20 but I would -- I believe they do. Thinking about it,
21 yes.

22 Q. Okay. And these are all sales that took place
23 over the last -- they ranged going back to '98 through
24 June of '07, right?

25 A. Yes.

1 Q. Did you consider any of these as comparable
2 for purposes of a discount rate analysis?

3 A. I'm aware of the sales, yes. I considered
4 them.

5 Q. That wasn't my -- you considered them?

6 A. Yes.

7 Q. Did you conclude that none of them were
8 comparable?

9 A. From my final analysis, that's correct.

10 Q. And why weren't they comparable? Why weren't
11 any one of these comparable if they're California
12 redwood sales? What made them not comparable?

13 A. Well, for different reasons, depending on
14 which sale you are discussing.

15 Q. So instead of these sales that involve redwood
16 and the sales in Oregon and Washington of timber
17 properties, you found none of those comparable and
18 instead used a corporate bond rate?

19 A. Well, two of them, three of them were way back
20 in the 1990s.

21 Q. That wasn't my question.

22 A. Excuse me?

23 Q. You found none of them comparable, none of
24 these sales or none of the other sales we discussed,
25 there were a total of 15 timber transactions and you

1 found none of them to be comparable, right?

2 A. I don't know what you mean comparable but --

3 Q. You didn't use any of them for purposes of
4 trying to abstract an appropriate discount rate for
5 timberland sales; is that correct?

6 A. That's correct.

7 Q. Okay. Now, instead, one of the things you did
8 in your proffer, although I could be wrong, but I don't
9 think it was in any of the underlying documents, you
10 provided some comparisons to apartment buildings and
11 malls, correct?

12 A. With regard to discount rate.

13 Q. With regard to discount rates. And you
14 concluded that apartment buildings and malls were a good
15 check for you for a discount rate for timberland
16 property in California; is that right?

17 A. I was looking -- I presented that information
18 as part of an analysis of just understanding the
19 relationships between the various rates that I selected
20 for my analysis. And this was readily available. And
21 it showed the indicators of the discount rate as well as
22 the overall cap rate and the residual cap rate.

23 Q. And you found them -- those discount rates for
24 the apartment buildings and malls to be a good check for
25 you on your discount rate for the timberland properties;

1 is that right?

2 A. I wouldn't call it a check as much as an
3 analysis of other investment types with regard to these
4 various variables.

5 Q. Mr. Fleming, do you have your proffer handy?

6 A. Yes.

7 Q. I think it is paragraph 154, but give me a
8 moment to find it. Do you have paragraph 154? It is
9 page number 85.

10 THE COURT: 154 starts on page 83 in
11 mine, so do I have the wrong one then?

12 MR. SCHWARTZ: Well, one of us does.

13 THE WITNESS: I agree with you, Your
14 Honor.

15 MR. SHIELDS: I have the same one you
16 have, Your Honor.

17 MR. SCHWARTZ: I have the most recent one
18 that was produced. So I think --

19 THE COURT: 154 starts "as a check"?

20 MR. SCHWARTZ: Yes. Yes.

21 THE COURT: And there's one that starts
22 on 85 and one that starts on 83 so probably the one the
23 Court has got to be updated so let's move on.

24 Q. (By Mr. Schwartz) Okay. Paragraph 154 it
25 says "as a check on the reasonableness of the various

1 rates selected for the analysis," and then it goes on to
2 talk about the regional malls and office buildings,
3 warehouses, right?

4 A. Yes.

5 Q. So you used it as a check on your discount
6 rate analysis, correct?

7 A. In a minor sort of way.

8 Q. In a minor sort of way?

9 A. Well, it was just for comparative purposes,
10 that's correct.

11 Q. Now, did you look for these apartment
12 buildings and office buildings and malls, did you look
13 at the trend of those discount rates to see if they had
14 been trending up, down or not at all in determining
15 whether they were an appropriate check?

16 A. No.

17 Q. Okay. Can we go back to Mr. LaMont's report,
18 which is Exhibit 97. And page 44. Actually, page 43.
19 I'm sorry. That's good. Do you have that in front of
20 you, Mr. Fleming?

21 A. Yes.

22 Q. Now, Mr. LaMont looked at malls and offices as
23 well, but as you can see, not to determine an
24 appropriate discount rate, but to look at trends. And
25 you can see, right, that all of these have been trending

1 down, all discount rates for these properties have been
2 trending down, right? Do you see that?

3 A. Generally.

4 Q. Let's move on to another subject, and that is
5 cap rates. Can you explain what a cap rate is?

6 A. It's a relationship or ratio from a single
7 year to the total property value or price.

8 Q. And cap rates have a -- have a significant
9 impact on your valuation, right?

10 A. With regard to the residual cap rate that I
11 use, yes.

12 Q. And can we look at -- now, did you -- I'll get
13 to the exhibit in the moment. But did you do any
14 analysis to figure out what the appropriate cap rate is?

15 A. Yes.

16 Q. What did you do?

17 A. I considered the variables and the residual
18 cap rate in my analysis.

19 Q. You said you considered things, but did you do
20 any sort of calculation to figure out a cap rate that
21 other people could look at it and see what variables you
22 put in and how much you attributed to each?

23 A. No.

24 Q. You just picked -- you just thought in your
25 head about a couple of rates and picked one?

1 A. No, I considered the various variables that
2 relate to the property being appraised in my analysis.

3 Q. But there's no way for us, based on your
4 documents, to figure out how much weight you put into
5 each factor, right, and how you came up with the cap
6 rate?

7 A. No.

8 Q. I apologize. I want to go back to discount
9 rate just for a brief minute. If you can pull up
10 Exhibit 189. This is this comparable sales that
11 Mr. LaMont used taken straight from his report. Do you
12 see that, they're the same sales, Morton, Olympic and so
13 on?

14 A. I don't think this is -- which report are you
15 talking about?

16 Q. From his original report that we looked at
17 before, the Oregon and Washington sales.

18 A. I don't recognize this chart.

19 THE COURT: Discount rates by the time of
20 the sale, of the various sales up there.

21 MR. SCHWARTZ: Correct, Your Honor.

22 Q. (By Mr. Schwartz) Do you understand that,
23 Mr. Fleming?

24 A. No.

25 Q. Okay. I'll represent to you that these sales,

1 we can go back and look at the report, but in an effort
2 to save time are the exact sales except for the last one
3 which is a new one that was added, the exact same sales
4 that Mr. LaMont had in his initial report at the time of
5 confirmation. And they have now been graphed to show
6 the trend. And do you see, again, that over time, the
7 last two, three, four years, the discount rates for
8 these timberland transactions have been on the decline?

9 A. According to the graph. Again, these are
10 Oregon and Washington sales.

11 Q. Let's talk -- you have no reason to believe
12 that the graph is wrong, do you?

13 A. Well, I don't know where the numbers come
14 from, but the graph is graphing the numbers that he has
15 estimated real discount rate. I don't know where those
16 real discount rates come from. But if you're just
17 talking about the graph itself, it appears to be graphed
18 correctly.

19 Q. And these are all large timberland
20 transactions, do you know that?

21 A. I'm not aware of all of them.

22 Q. What about -- do you know that they're all
23 bought by sophisticated buyers for hundreds of millions
24 of dollars?

25 A. I don't recall.

1 Q. Do you know that they all have more than
2 100,000 acres of property?

3 A. I don't know the specifics of these
4 properties, of all of them anyway.

5 Q. And let's move on to harvest rates. You
6 talked at confirmation that you used an average harvest
7 rate of 81 million board feet for the first nine years,
8 right?

9 A. Yes.

10 Q. And then now for your new appraisal, you used
11 82 million board feet, correct, as of January -- as of
12 the petition date, right?

13 A. Approximately.

14 Q. And that factor, the increase in the harvest
15 rate would have a tendency to increase the value of the
16 property as of the petition date, right?

17 A. It's one of the components of value, yes.

18 Q. Right. And directionally, it increases the
19 value by harvesting more?

20 A. You're harvesting more timber up front, yes.

21 Q. Okay. Now, what is the basis for you going
22 from 81 million board feet in October to 82 million
23 board feet in January of 2000?

24 A. Because I'm appraising the property at January
25 18th, 2007.

1 Q. Right.

2 A. I went back to the volumes that I was provided
3 by Scopac foresters based on their GIS database as of
4 the -- essentially as of the first of the year, but
5 technically for this case that means January 18th, 2007.

6 Q. Was that the same inventory information you
7 had for your October 1st, 2007 valuation?

8 A. It was -- the initial volumes, yes.

9 Q. Okay. And so explain to me why you have in
10 your analysis the ability to harvest an additional
11 million board feet a year each year in the first nine
12 years.

13 A. For the October valuation, I had deducted 63
14 million feet that had been harvested by Scopac over
15 those nine years. So effectively, by going back to the
16 original information, I was -- I was, in essence,
17 putting that 63 million back into the analysis.

18 Q. Okay. But in your October valuation, when you
19 deducted 63 million board feet that had been harvested,
20 did you add in growth from January to October?

21 A. For the October analysis?

22 Q. Yeah.

23 A. I had taken out the volume as of January 1,
24 the 63 million and then I grew that volume to the
25 resulting volumes by WAA to October 2007.

1 Q. Let me try and ask it very simply. Was there
2 more timber available to harvest on January 18, 2007 or
3 on October 1st, 2007?

4 A. I was -- I think I harvest more than I grew
5 because the volume was --

6 Q. Mr. Fleming, I don't mean to interrupt but
7 that's not my question. My question is: Was there more
8 timber available to harvest on January 1st, 2007, or on
9 October 1st, 2007?

10 A. There was less in October of 2007 because I
11 took the harvestable volume from only the -- what I'm
12 calling the no restrictions of the available timber at
13 that time.

14 Q. Maybe I didn't ask the question correctly.
15 I'll try again. Forget about your analysis for a second
16 and what you did. I am asking as a factual matter, do
17 you know whether the Scopac timberlands had more timber
18 available for harvest on the 1st -- on January 18, the
19 petition date, or on October 1st, 2007?

20 A. It had more on January 18th, 2007.

21 Q. And have you read -- and what do you base that
22 on?

23 A. I'm using data that was provided me by Scopac
24 foresters.

25 Q. Now, have you reviewed Mr. Barrett's proffer

1 in this case?

2 A. I don't believe -- I don't know if I have or
3 not.

4 Q. And let me just be clear. There are two
5 proffers.

6 A. I don't believe so.

7 Q. Did you talk to any of the Scopac foresters to
8 find out whether they agreed with your assessment that
9 there was more available timber in January than in
10 October 2007?

11 A. No.

12 Q. Could we look at the Barrett proffer for a
13 second. Do you have that? Paragraph eight. I'm sorry,
14 I was looking at the wrong proffer. Paragraph 11. Do
15 you see -- do you have paragraph 11 in front of you,
16 Mr. Barrett's proffer?

17 A. The top part of it, yes.

18 Q. Through A and B, right?

19 A. Yes.

20 MR. FROMME: Your Honor, this is not my
21 witness but I do object to the point that this proffer
22 only compares harvest -- the volume from January 2007 to
23 January 2008. It makes no representation as to the
24 volume of the timber on October 2007.

25 THE COURT: Well, and it's about 12:00.

1 How long are you going to be with this witness?

2 MR. SCHWARTZ: I'll finish before 12:30.

3 THE COURT: Okay. Well, we'll finish
4 then.

5 Q. (By Mr. Schwartz) Do you know who Mr. Barrett
6 is?

7 A. Yes.

8 Q. Who is he?

9 A. Dr. Barrett is the CEO of Scotia Pacific
10 company.

11 Q. And you were here when he testified before,
12 correct, at confirmation?

13 A. I wasn't here for every -- every witness. In
14 fact, I believe I was not here for Dr. Barrett's.

15 Q. Now, we'll get into the proffer. Have you
16 seen this proffer before?

17 A. I don't -- I'm not sure.

18 Q. Do you recall that I showed you during your
19 deposition a similar proffer from March of 2008 on this
20 very point about the harvest versus the growth?

21 A. I don't recall, but I believe you.

22 Q. Now, Mr. Barrett says that in 2007 there was a
23 55 million -- and I'm reading from 11-A, "55 million
24 board feet net volume above what was harvested." Do you
25 see that?

1 A. Yes, including the hardwoods.

2 Q. Correct. Do you have any reason to think that
3 Mr. Barrett is incorrect in that statement?

4 A. I've done an analysis. I'll go with my
5 analysis.

6 Q. And your analysis would show the opposite?

7 A. I don't know when you say "opposite," do you
8 consider what?

9 Q. That's a good point. Let me be more specific.
10 Your analysis would say that rather than an increase in
11 available board feet, there was a decrease in available
12 board feet in 2007, right, or at least through October
13 of 2007?

14 A. As I recall. I mean, I have to check. It's
15 in my tables, I'm just going from memory here, but we
16 could check if we looked at the October appraisal. But
17 I'm focusing at this point on the volume that I have
18 assigned to the no restriction lands in my analysis.

19 Q. That's not my question. My question is: Does
20 your analysis provide that there was less timber on
21 January 18, 2007 or more timber on January 18, 2007 than
22 there was in October?

23 MR. SHIELDS: Excuse me, Your Honor, I'm
24 going to object to the question as vague. He keeps
25 asking it in a different way. Sometimes he just asking

1 timber, other times it harvestable timber and it's going
2 to create a totally garbled --

3 MR. SCHWARTZ: Actually, I don't think I
4 used the phrase harvestable timber. I'm asking about
5 all timber. If I could just get an answer, I wouldn't
6 have to ask it a couple of times.

7 THE COURT: He believes there was more
8 timber in 2007 beginning than there was at the date of
9 confirmation or the date -- I don't know. Is it the
10 date of confirmation or the date of your report?

11 MR. SCHWARTZ: Date of his report, I
12 believe.

13 Q. (By Mr. Schwartz) Is that what you believe,
14 there was more timber in January than in October?

15 MR. KRUMHOLZ: He's asked and answered
16 that like four times.

17 THE COURT: Yeah, I know, he believes
18 there was more in January than October.

19 MR. SCHWARTZ: I'll move on, Your Honor.

20 Q. (By Mr. Schwartz) Let's talk about prices.
21 You said earlier that prices were the primary reason for
22 your higher value as of the petition date, right?

23 A. Certainly a significant factor.

24 Q. Now, during what time period did you look at
25 prices in determining what price you were going to use

1 for your January 2007 appraisal?

2 A. I went back and looked at what I had in my
3 files. And in general, went back to I'm guessing about
4 May of 2006.

5 Q. And how far forward did you go?

6 A. Well, I had data all the way through roughly
7 October of 2007.

8 Q. I'm not asking you what data you had, I'm
9 asking you what you used.

10 A. Oh, I used? It varied. I'd have to look at
11 the report. But in the end of May or June, depending on
12 species.

13 Q. Well, let's take a look at your report.

14 THE COURT: Is there a chart of prices?

15 Q. (By Mr. Schwartz) Do you have a chart of
16 prices in your report, Mr. Fleming?

17 A. Yes, I do.

18 Q. Do you have your proffer there? It's in your
19 proffer. That's the report. Is it in your proffer?

20 A. It would be in my --

21 THE WITNESS: For young growth redwood,
22 for instance, it would be page 56, Your Honor.

23 THE COURT: 56. I don't think I have 56.
24 I have tables.

25 THE WITNESS: Table 13.

1 MR. SCHWARTZ: Table 13 on page 56.

2 THE COURT: Okay. It's in your report,
3 it's not in the appendix. I'm sorry. I do have the
4 pages. Table 13 is on page 56. Okay.

5 Q. (By Mr. Schwartz) Now, am I correct in
6 looking at this chart for at least young growth redwood,
7 which is the most important in terms of valuation,
8 right?

9 A. It's significant, yes.

10 Q. You looked at prices from May '06 to May '07;
11 is that right?

12 A. Just the ones I focused on, yes.

13 Q. Right. Now, tell me why you used that time
14 period.

15 A. Well, the date of value was January 2007,
16 January 18, 2007. And as you can see from -- from
17 looking at table 13, which is all young growth redwood,
18 as I might expect, most sales occur in the spring, in
19 May, in June and then sales taper off in the second half
20 of the year normally. And in this case, you see there's
21 only two that really occurred in August and October,
22 sale 25 and sale 26. And then I didn't have any until
23 March.

24 Q. I don't think you answered my question. My
25 question is: Why did you use the time period May '06 to

1 May '07?

2 A. Well, I used them because I didn't have an
3 adequate number of sales around the date of valuation.

4 Q. Let me be more specific. Why did you feel it
5 appropriate to go to May of '07 when you, from your own
6 testimony, were trying to value the property from the
7 standpoint of a person looking at it in January of '07?

8 A. Because I didn't have any sales in this case
9 after October of '06. And I'm appraising the property a
10 few months later. I had detail for March and May as
11 well as June, for that matter, all the way to October of
12 '07. So I -- I bracketed the date of value in order to
13 understand the relationships of value in my analysis.

14 Q. And now, a person standing there in January of
15 2007 wouldn't have any of the data that you have through
16 May of '07, correct?

17 A. That's correct.

18 Q. So why did you think it was appropriate to use
19 then when you're trying to look at this from a
20 standpoint of a person in January of '07?

21 A. Because as I indicated, I did not have any
22 data at that point. And since I had it in this case, we
23 were talking earlier about a retrospective appraisal,
24 that I thought this was -- would be useful in my
25 analysis, although I am focusing on the data that's

1 before the date of value.

2 Q. You had data going past May of '07, right?

3 A. Yes.

4 Q. But you didn't use that?

5 A. No.

6 Q. Why did you cut it off?

7 A. Well, I mean, I considered it. I had it.

8 Q. It's not on your chart, right?

9 A. No.

10 Q. And you didn't use it in calculations to
11 figure out the price you were going to use for January
12 of '07, right?

13 A. That's correct.

14 Q. Okay. Why did you cut it off in May?

15 A. I felt I had an adequate number of sales after
16 the date of value that would allow me to form an opinion
17 regarding the delivered log values as of the date of
18 valuation.

19 Q. Now, isn't it true that the prices for logs
20 are cyclical and always are generally higher in the
21 spring than in the fall?

22 A. Well, one thing that happens is that -- well,
23 the answer generally, yes.

24 Q. Generally, yes. So by doing what you did, by
25 using May to May, you have two springs where prices are

1 higher and only one fall where prices are lower; is that
2 right?

3 A. Well, I'm not sure that -- that's correct in
4 this case.

5 Q. That's correct. Okay. Now, when -- you said
6 that prices started to decline in 2007, right? Is that
7 right?

8 A. When?

9 Q. Well, I'm going to ask you that.

10 A. I mean, when did you say that I said that?

11 Q. I'm sorry. I will get to that. Did prices of
12 logs start to decline at some point in 2007?

13 A. You're talking about redwood, young growth
14 redwood?

15 Q. Sure, let's talk about young growth redwood.
16 Did they start to decline in 2007?

17 A. I believe they did, yes.

18 Q. When in 2007?

19 A. I haven't really made a determination exactly
20 when the break occurred.

21 Q. You haven't?

22 A. The data here through May suggests that it's
23 relatively stable through this period.

24 Q. Let's take a look at your prior appraisal
25 report that you submitted at the confirmation hearing,

1 MMX 134, specifically page 41.

2 MR. SCHWARTZ: I'm sorry, Your Honor, one
3 minute. I apologize, Your Honor, this will just take a
4 second.

5 Q. (By Mr. Schwartz) This is your appraisal
6 report, correct, from the confirmation hearing?

7 A. Yes.

8 Q. If we can go to page 41 of that. It should
9 have at the top "young growth redwood." Okay. Do you
10 see you're talking about young growth redwoods?

11 A. Yes.

12 Q. Prices. And if you go down to the third
13 paragraph at the very bottom of the page.

14 MR. SCHWARTZ: John, can you scroll up a
15 little bit.

16 Q. (By Mr. Schwartz) Okay. Right there in the
17 middle of the page it says "clearly prices have been
18 drifting downward since May." Is that right?

19 A. I'd have to look at that table, but I'll
20 assume that I'm correct there.

21 Q. But you wrote this report, right?

22 A. Yes.

23 Q. And that's what you wrote?

24 A. Yes.

25 Q. Okay. So by cutting it off in May, you stop

1 right when prices, by your own statement in your report,
2 started to decline, right? Is that right?

3 A. I cut it off right when -- I cut it off in
4 June, I just -- I just kept all of the May sales and
5 didn't use the June sales.

6 Q. Right. And you didn't use anything after?

7 A. I was aware of them in my analysis, but for
8 the purpose of this report and the purposes of the
9 analysis, I did not include the June sales.

10 Q. So when you did the actual calculation to
11 determine what price you would use for logs, you
12 calculated it using prices from May of '06 to May of
13 '07?

14 A. I didn't calculate it.

15 Q. You didn't?

16 A. Well, I have some examples of how I would --
17 using estimates of how I would develop a delivered log
18 value but in the final analysis it's not calculated.

19 Q. How did you determine what price to use as
20 your starting price for young growth redwoods in doing
21 your valuation as of the petition date?

22 A. I reviewed the detail that is in -- for young
23 growth redwood in table 13.

24 Q. And how did you come up with the numbers? Did
25 you look at averages and throw out highs and lows and

1 then come up to what you felt was a reasonable average?

2 A. Yes.

3 Q. Isn't that what you discussed throughout your
4 proffer for each species?

5 A. Yes.

6 Q. That's what you did?

7 A. Yes.

8 Q. And in doing those calculations that led you
9 to a starting price, you only used in the calculation
10 prices from May of '06 to May of '07?

11 A. That's correct.

12 Q. Okay. And right after that, prices started to
13 decline?

14 A. Well, that's five or six months after the date
15 of -- five months, I guess, after the date of value.
16 Again, I'm focusing on January of 2007 in this case.

17 Q. But you felt it okay to consider prices
18 through May?

19 A. Well, in this case since I had so few sales in
20 that second half of 2006, that it would be reasonable to
21 assume -- to consider sales after that date. Had I had
22 an adequate number of sales in the second half of the
23 2006, I probably wouldn't have considered the March 2007
24 and the March -- May sales.

25 Q. Let me ask you this question: Prices is the

1 only element, is it not, in your analysis where you
2 considered information that existed post your valuation
3 date?

4 A. That's not necessarily true.

5 Q. Did you use any information post valuation
6 date in coming up with your discount rate?

7 A. Yes.

8 Q. What information?

9 A. In my -- in my -- for example, in my analysis
10 of log haul expense in the October of 2007 appraisal, I
11 used \$83 per hour for log haul.

12 Q. That wasn't my question. I asked you about
13 the discount rate. But since you brought up the cost,
14 that was the one that was the pennies difference, right?

15 A. No, no, that's not true on that one.

16 Q. Were your cost numbers virtually identical in
17 your petition date valuation to your October valuation?

18 A. Yes, because when I did the valuation for
19 January 18th, I decided to not change the hourly rate
20 and I kept the \$83. However, I did run the analysis at
21 one point using the 82, which I think would be more
22 appropriate at January of 2007.

23 Q. But you didn't use it?

24 A. But in the final analysis, I kept the \$83 as
25 sort of --

1 Q. So let me ask you more specifically. In your
2 final appraisal analysis for January 18, 2007, other
3 than price information, did you actually use any
4 information that came into being post the appraisal date
5 of the petition date?

6 A. I didn't change anything. I'm not sure what
7 you mean by used. I used the same numbers, the same
8 cost estimates that I had included in the October
9 appraisal in the January appraisal.

10 Q. Right. Same costs, same discount rate, same
11 cap rate, right? We talked about the harvest rate. And
12 what you actually did was went back in time to put
13 yourself in the position, or at least what you think is
14 the position in January, but for prices, you did
15 something different. For prices, you went to the
16 spring, through the spring of '07 when prices were at
17 their peak; isn't that right?

18 A. I analyzed --

19 Q. Is that right?

20 A. Yes, in this case.

21 Q. Okay. Thank you. One more point on prices.
22 You, again, went -- you used 3.5 percent price
23 appreciation per year every year, right, for young
24 growth and old growth redwood?

25 A. You said 3.75?

1 Q. 3.5.

2 A. I'm sorry. 3.5 for redwood.

3 Q. Yes, for redwood.

4 A. Yes.

5 Q. Now, prices have been declining according to
6 go your testimony and according to the Judge's findings,
7 which we don't dispute. Prices have been declining for
8 redwood logs, right?

9 A. In this period we're discussing, yes.

10 Q. But you, in January of '07 when you did your
11 appraisal, you said there was going to be a 3.5 percent
12 price increase in '07 and then a 3.5 percent price
13 increase on top of that in '08 and a 3.5 price increase
14 on top of that in '09 and every single year after for
15 nine years, correct?

16 A. I'm appraising --

17 Q. Is that right?

18 MR. SHIELDS: Excuse me, Your Honor, I'm
19 going to object to him interrupting.

20 THE COURT: These are pretty simple
21 questions and I don't think that they are subject to
22 much -- I mean, think it's pretty clear and we all know
23 it in the whole courtroom. I'm not sure why he doesn't
24 want to say he had a 3.5 price increase beginning from
25 the beginning.

1 MR. SHIELDS: I'm not disputing what he's
2 saying, Your Honor.

3 THE COURT: And he's entitled to have him
4 say that.

5 MR. SHIELDS: Mr. Fleming is not even
6 being given the opportunity to get two words out before
7 he cuts him off.

8 THE COURT: Because he's not saying yes,
9 it's right, that's what I did. If the two words were
10 yes, it would just take one. And we would be through
11 with all of this. But go ahead.

12 MR. SHIELDS: I don't mind nonresponsive
13 answers being stricken or objected to but he should be
14 allowed to answer.

15 THE COURT: I agree that you should not
16 jump on top of the witness, and if he has a problem with
17 the answer you can ask me to instruct the witness. So
18 you are correct about that.

19 MR. SHIELDS: Thank you.

20 Q. (By Mr. Schwartz) Do you recall the question?

21 A. Yes.

22 Q. Can you answer the question or do you want me
23 to repeat it?

24 A. No.

25 Q. What is the answer to my question?

1 A. The answer is yes.

2 Q. Thank you. Now, will you agree with me that
3 in comparing valuation on two different dates, you would
4 want to use the same approach and the same methodology
5 in order to have an apples to apples comparison?

6 A. I'm comfortable with my analysis on both days.

7 Q. Maybe my question wasn't clear.

8 A. I'm not sure what your question was.

9 Q. Okay. Mr. LaMont has one analysis, I'll try
10 it as a hypothetical. Mr. LaMont has one analysis and
11 you have a different analysis, right? You do things in
12 different ways; is that right?

13 A. We're both doing a discounted --

14 THE COURT: Is this a psychological
15 question?

16 MR. SCHWARTZ: I don't know. I have two
17 minutes left. I think --

18 THE COURT: Let's don't ask rhetorical
19 questions in the two minutes. You really have eight
20 minutes, but go ahead.

21 MR. SCHWARTZ: I'm going to try and only
22 use two.

23 Q. (By Mr. Schwartz) You would want the
24 methodology used on date one to be the same as the
25 methodology used on date two to have an apples to apple

1 comparison; is that fair?

2 A. I guess I don't under your question. I have
3 apples to apples.

4 THE COURT: I don't really understand.

5 A. What am I comparing?

6 THE COURT: I mean, is he to forget about
7 the fact that I've ruled and already questioned things
8 that he's done and not try to make his ruling be more in
9 line with what I want? Of course not. I think he would
10 want to use the same methodology both times, but he gets
11 to benefit of learning between the first one and the
12 second one.

13 Q. (By Mr. Schwartz) Okay. Let me just ask it
14 this way then: Would you agree that if one would accept
15 the Court's view that the timberlands are worth no more
16 than \$510 million today, then that the Court should not
17 accept your valuation of \$646 million as of the petition
18 date?

19 A. No, I don't agree.

20 Q. Didn't you agree with that at your deposition?

21 A. I don't recall.

22 Q. Could we have Mr. Fleming's deposition, page
23 216. Do you have your deposition there in front of you?
24 216, line 12. Tell me when you're there, Mr. Fleming.

25 THE COURT: You can see it on the screen.

1 A. I have it.

2 Q. Okay. And Mr. Brilliant asked you this
3 question: "Do you think if you were -- this is a
4 hypothetical question. So I know you don't agree with
5 this. If you were to accept the Court's view that the
6 company -- that the timberlands are worth no more than
7 \$510 million as of the present date, do you think that
8 it would be appropriate to find that your valuation as
9 of January 18th, '07 was correct?" And your answer was
10 "no." Did you testify --

11 MR. SHIELDS: Your Honor --

12 Q. (By Mr. Schwartz) Did you testify that way at
13 your deposition?

14 MR. SHIELDS: Your Honor, under the
15 doctrine of optional completeness, he needs to give you
16 about six more lines.

17 MR. SCHWARTZ: I'll go further.

18 Q. (By Mr. Schwartz) Did you testify that way?

19 A. I apparently did. I said no.

20 Q. Okay. And then Mr. Brilliant asked you "why
21 not?" And you said "I don't know what the Judge did to
22 come up with his valuation of 510." And then I'll go
23 further if Mr. Shields would like.

24 MR. SHIELDS: Please, sir, at least
25 through line 4 of page 217.

1 Q. (By Mr. Schwartz) Absolutely. That's the
2 next question and answer. And it says "but if you were
3 to agree that it's worth 510, then your valuation as of
4 January 18, '07 wouldn't be right. That's what you're
5 saying?" And your answer was "I appraised the property
6 on January 18, '07. What I could -- what I knew at that
7 point in time, based on the data I had to analyze that
8 property." That was the end of your answer.

9 A. Correct.

10 Q. Do you stand by that testimony?

11 A. Yes.

12 MR. SCHWARTZ: I have no further
13 questions, Your Honor.

14 THE COURT: Okay. We're going to break
15 for lunch now. I'm going to suggest, because things
16 take more time than normal, that you come back at 2:30.
17 So those of you on the phone if you could be back on the
18 phone with the court call by 2:30 and I'll take the
19 Asarco call at 2:00. You're welcome to leave everything
20 in the courtroom if you are to be here. But everyone
21 please be back by 2:30.

22 (A recess was taken for lunch.)

23 THE COURT: All right. We're on
24 Mr. Fleming. And who is up? Are we on his redirect?

25 MR. STRUBECK: May I approach about

1 something before we start on his redirect?

2 THE COURT: Sure.

3 MR. STRUBECK: You haven't talked to you
4 yet today.

5 THE COURT: I know, I've already been
6 slammed once.

7 MR. STRUBECK: That's the only slamming
8 that you get to see in court, there's a lot more of it
9 that goes on behind the scenes. Your Honor, the reason
10 that I'm here right now is basically it's a courtesy to
11 Mr. Klein and his clients. Mr. Klein is in the
12 courtroom and his clients are as well.

13 THE COURT: I know Mr. Klein doesn't like
14 to speak for himself.

15 MR. STRUBECK: Well, he probably can't
16 speak for himself on this very matter and I just want to
17 tell Your Honor what I want to present and then you can
18 decide if you want to handle it and how you want to
19 handle it. There's a declaration of the client that
20 Mr. Klein represents who I think you met before, Mr. Red
21 Emerson.

22 THE COURT: Right.

23 MR. STRUBECK: And the declaration was
24 filed actually by Mr. Klein in response to a motion that
25 Ms. Coleman had filed. It involves a backup 363 sale

1 motion. When we saw the declaration, we decided we
2 might use it in connection with some of the other
3 proceedings, not just the 363 sale. And we would like
4 to offer Mr. Emerson's declaration and have him testify
5 as a rebuttal witness in connection with the 507(b)
6 claim. I disclosed that to everybody earlier this
7 morning and there's some opposition to it so the only
8 matter that I'd like the Court to consider now is
9 whether Mr. Emerson will be allowed to testify because
10 if Your Honor decides that he can testify, if you think
11 that's the Gropper decision, then Mr. Klein will stay.
12 But if he can't testify, then he and all of his clients
13 get to go back to California. So that's the matter that
14 I wanted to ask you about, if you're willing to consider
15 it.

16 THE COURT: Why would he -- why would
17 they not be allowed to call him as a rebuttal witness?

18 MR. NEIER: Your Honor, can we first have
19 an offer of proof because we don't know if they'd
20 actually testify or not.

21 MR. BRILLIANT: Your Honor, the
22 understanding we have from the conversation we had with
23 Mr. Strubeck earlier is that they want to have admitted
24 the declaration that Mr. Emerson filed in connection
25 with the 363 sale. The issues with respect to the

1 declaration have to do with the mill, not with the
2 Scotia timberlands. It's the timberlands, Your Honor,
3 which are the subject in the Scotia case which is the
4 subject of the 507(b) claim. What goes on with respect
5 to the mill and whether or not Mr. Emerson has a better
6 plan for the mill is irrelevant as to whether or not
7 values have increased, decreased or stayed the same
8 during the pendency of the bankruptcy.

9 THE COURT: I don't know what the
10 offer --

11 MR. STRUBECK: Your Honor, may I approach
12 and I'll show you the --

13 THE COURT: Sure, tell me what he's going
14 to say that you think is significant in rebuttal.

15 MR. STRUBECK: What I think is
16 significant, Your Honor, he's going to testify what he
17 would do with the mill if he were successful in
18 connection with this Section 363 plan. I believe he
19 testified at the confirmation hearing, at least I'm told
20 he was here to testify.

21 THE COURT: He did.

22 MR. STRUBECK: At the confirmation
23 hearing.

24 THE COURT: We heard about -- I heard --

25 MR. SHIELDS: Only his declaration. No

1 one asked him a question. I was permitted to have the
2 ten minutes.

3 MR. STRUBECK: So you see, Your Honor,
4 the offer of proof that I make -- and then I'm going to
5 tell you how it links to the 507(b) motion specifically.
6 He's going to testify that he's the president of Sierra
7 Pacific.

8 THE COURT: Well, you don't have to go
9 through all that. Just tell me what the bottom line is.

10 MR. STRUBECK: The bottom line is this,
11 Your Honor. Ordinarily if we were hearing the 507(b)
12 motion after the effective date of the plan, which is
13 the way this usually happens, there would be no linkage
14 and I could not stand up here and argue this. But they
15 have made it relevant, they have linked it. And here's
16 how they've done it. They said to you, Judge, twice
17 Mr. Neier said it during his opening statement and I
18 think it was also said in connection with Mr. Dean being
19 on the stand that if you allow an administrative expense
20 priority claim for us in our 507(b) motion, that that's
21 going to kill their plan. In fact, they have amended
22 their plan to specifically provide for that. They say
23 the effect of the plan doesn't go effective unless you
24 enter a final order that zeros out our admin expense
25 claim.

1 THE COURT: But that's elementary
2 bankruptcy law. We all agree with that.

3 MR. STRUBECK: I know, Judge, but because
4 they have linked it and because they said that the two
5 were so interconnected, we think you ought to be able to
6 hear from Mr. Emerson who is going to tell you that he's
7 got a better plan for the mill and the mill is not going
8 to go away if you grant our motion, and as they say,
9 their plan goes away. That's the purpose for it. And
10 one more thing, Judge, it's not going to take very long.
11 We have already provided them with a copy of this
12 declaration on Sunday and told them we might use it in
13 connection with the hearings this week.

14 MR. BRILLIANT: Your Honor --

15 THE COURT: Yes, go ahead.

16 MR. BRILLIANT: A couple of issues here.
17 First, you know, what goes on with the mill, you know,
18 is not relevant to the valuation hearing. You know,
19 what Mr. Strubeck is talking about is argument and not
20 facts. Arguing that the plan, you know, would not go
21 effective, you know, the possibility of the mill
22 closing. The issue as to whether or not this is
23 rebuttal, it's not rebuttal to any testimony that's
24 going on here. Mr. Emerson was not put on any witness
25 list. Your Honor may remember that when we specifically

1 had our conference with Your Honor about discovery
2 disputes and one of the issues that we had was whether
3 or not Mr. Emerson would be put on their list in
4 connection not with this hearing because obviously it's
5 not relevant to 507(b), but instead whether they would
6 be on the stay issue and we specifically asked and
7 mentioned his name in that hearing. His name never
8 showed up on any list and so he hasn't been deposed.
9 You know, our sense is this is completely irrelevant.
10 All it does is delays things. If there is a 363 sale
11 motion, if we get there, if Your Honor, you know, rules
12 against us in the 507(b), or we somehow get there, then
13 he should testify in a hearing where his testimony is
14 relevant. But he surely shouldn't testify in a hearing
15 where he's not relevant, he's not rebutting anything and
16 he hasn't been deposed.

17 THE COURT: Okay. Well, I'll let Bank of
18 America say theirs.

19 MR. JONES: Your Honor, two quick things.
20 Bank of America completely joins in the opposition. The
21 proposed testimony has nothing to do with the 507(b)
22 claim. By the way, Your Honor, I'd also note counsel
23 says, well, maybe it's relevant to the 363 motion if we
24 ever get there. It's not. The 363 motion is to sell
25 Scotia assets and he's here saying I want to bid on

1 Palco assets which, by the way, Your Honor, is what he
2 showed up at the confirmation hearing.

3 And Your Honor, I also want to speak to
4 Mr. Strubeck's point because what Mr. Strubeck just said
5 is, Your Honor, we think you might make the wrong
6 decision on this 507(b) claim because you're improperly
7 influenced by whether this is a good plan or not and
8 whether it can go effective. Your Honor, that's
9 offensive to this Court and that's not appropriate.
10 This Court is going to make a judgment on the 507(b)
11 claim on its merits, not whether there are other better
12 opportunities out there, not whether Mr. Emerson might
13 come along and save us all later.

14 And by the way, Your Honor, let's also
15 get to what they really want it for, not whether
16 Mr. Dean is really a good guy or has good employment
17 practices or pays good wages or all the other things
18 they have in these six declarations that they want to
19 get in that are not material to the matters today. It's
20 a totally peripheral matter and we shouldn't start into
21 it because if we do, we're going to be here for another
22 week over whether Mr. Dean is a good guy or not and
23 whether the Court should have approved his deal back
24 three weeks ago. Thank you, Your Honor.

25 MR. NEIER: David Neier on behalf of

1 Marathon. Your Honor, it seems to me what Mr. Strubeck
2 is arguing is a feasibility issue. We have already had
3 the confirmation hearing, the Court has already decided
4 that we're feasible, then this issue came up.

5 THE COURT: I don't think -- I mean, the
6 only way this comes in is if there's some nebulous
7 notion of equity in a 50 whatever motion that we're
8 having.

9 MR. NEIER: I can tell you --

10 THE COURT: I don't know --

11 MR. NEIER: I can already tell you the
12 answer to that right now, which is that Mr. Emerson is
13 seeking to bid on the mill for far less than the debt at
14 Palco, far less.

15 THE COURT: Which --

16 MR. NEIER: Means there's no equity
17 issues.

18 THE COURT: I mean, the issue could go in
19 your favor in the sense that it would have been a lot
20 easier for the Noteholders to cram you down than you
21 cram them down but they didn't do it. I don't know why
22 they didn't do it. Now they even got a guy who would
23 have bought it.

24 MR. NEIER: Yeah.

25 THE COURT: Why they didn't do it I don't

1 know.

2 MR. NEIER: I don't know either.

3 THE COURT: So I'm going to think about
4 it. So you've got to stay for a few more minutes at
5 least and maybe for the rest of the hearing.

6 MR. KLEIN: I'll be happy to, Your Honor.
7 Since they're talking about my client, can I say as to
8 why we're here?

9 THE COURT: Sure.

10 MR. KLEIN: And we have been asked to be
11 a witness. We filed a declaration. In fact, there's
12 not just one declaration, there's only one that they're
13 talking to you about, but there's 12 declarations. Most
14 of them, ten, from the business leaders in the Scotia
15 area supporting a sale to my client, Sierra Pacific. My
16 client, as I said, is the second largest manufacturer of
17 lumber in the country, significantly larger than MRC.
18 To put it in context, and only to put it in context, we
19 cut more lumber in a week than MRC does in a year.

20 We saw that Scotia Pacific filed a motion
21 to sell under Section 363 and we wanted to raise our
22 hand and say, Judge, we should be considered for this.
23 They set it for today and we showed up today. Now,
24 despite the strong progress of the proceedings in the
25 last two days, it's apparent to us that you're probably

1 not going to reach the 363 motion today. So we told
2 Counsel for the bond holders, my clients want to go back
3 to California. They said we'd like to ask your clients
4 some questions because they think it would be helpful in
5 the 506(b). We said, my client is the only real sawmill
6 operator here. He's not a whiz bank financial wizard,
7 not an investment banker, but Red Emerson has actually
8 built and operated sawmills for 50 years.

9 He's got 15 of them today. We'll answer
10 questions from anybody, but we'd like to do it today
11 because my clients would like to go back to California
12 if we're not going to hear the 363 motion.

13 THE COURT: All right. Well, I'll rule
14 on that in a minute, but let's go on. Let's finish this
15 witness and we'll rule on it in time for them to testify
16 today if I'm going to let them.

17 MR. KLEIN: Thank you.

18 THE COURT: Go ahead.

19 MR. FIERO: No questions from the
20 committee, Your Honor, but if this issue is going to be
21 considered again, the committee would like an
22 opportunity to argue.

23 THE COURT: All right.

24 MR. HAIL: No questions for Mr. Fleming,
25 Your Honor.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MR. JONES:

4 Q. Good afternoon, Mr. Fleming. Evan Jones on
5 behalf of Bank of America. Mr. Fleming I want to make
6 sure I understand exactly what your valuation efforts in
7 this case have been. You expressed an opinion as of
8 January 17th or 18th, 2007 and one as of October 1st,
9 2007; is that correct?

10 A. Yes.

11 Q. And you've not prepared an appraisal as of any
12 other date; is that correct?

13 A. For this case, that's true.

14 Q. Have you prepared appraisals of this property
15 for other cases or other purposes?

16 A. No.

17 Q. Okay. You've done other appraisals of other
18 property?

19 A. That's correct.

20 Q. Okay. You mentioned that you have views as to
21 the change in value that may have occurred since October
22 1st of 2007 until today, but you've not prepared an
23 appraisal reflecting those views, have you?

24 A. Just the trends.

25 Q. But only two specific dates?

1 A. Yes.

2 Q. And both of your appraisals are fair market
3 valuations of the property, right?

4 A. Yes.

5 Q. They're not marketing surveys?

6 A. No.

7 Q. You haven't gone out and tried to find if I
8 were to sell this property today, who's available to buy
9 it, who's ready, willing and able to buy it, right?

10 A. They are appraisals, opinions and market
11 values on those two days, January 18th, 2007, October 1,
12 2007.

13 Q. But market value doesn't mean there is
14 actually someone ready, willing and able to buy it at
15 that price on that date, does it?

16 A. I don't have a particular buyer in mind, no.

17 Q. And it's often the case that 100 percent
18 accurate fair market value appraisal doesn't mean
19 there's a buyer ready, willing and able to buy that
20 piece of property on that date, right?

21 A. I don't know. I'm just -- I'm appraising the
22 property as to what my opinion of what it would -- what
23 a potential buyer could pay -- could -- would be willing
24 to pay for it under the definition of market value.

25 Q. But in your experience, you've had occasions

1 where you've appraised property, the buyer doesn't show
2 up at that value that day, did they?

3 A. No.

4 Q. Now, Mr. Fleming, fair market value assumes a
5 willing buyer and a willing seller with neither under
6 compulsion, right?

7 A. Arm's length transaction, yes.

8 Q. With neither party under compulsion?

9 A. Yes.

10 Q. That wouldn't describe a foreclosure sale,
11 would it?

12 A. No.

13 Q. And in fact, you would agree with me, wouldn't
14 you, that foreclosure sale prices are often less than
15 fair market value; is that fair?

16 A. It's possible.

17 Q. Isn't it true?

18 A. I think fair market -- I mean, foreclosure
19 sales could be higher. I don't know.

20 Q. Usually they're lower, aren't they?

21 A. I would say yes.

22 Q. And so, in fact, if you're doing an appraisal
23 and you have comps, you tend to either exclude or at
24 least adjust for a foreclosure price in figuring out
25 fair market value, don't you?

1 A. I probably would not use a foreclosure sale.

2 Q. You wouldn't use it. Okay.

3 MR. JONES: Your Honor, that's all the
4 questions I have. Thank you, Mr. Fleming.

5 THE COURT: All right. Anyone else other
6 than -- all right. Redirect.

7 REDIRECT EXAMINATION

8 BY MR. SHIELDS:

9 Q. Todd Shields for Bank of New York Indenture
10 Trustee for the timber Noteholders. Mr. Fleming, good
11 afternoon. I wanted to follow-up on some of the
12 questioning that you got before the lunch break as well
13 as some of the questions you had after the lunch break
14 as well.

15 First of all, there was discussion during the
16 cross-examination of portions of the Court's opinion
17 that commented on your work that led up to the October 1
18 appraisal. And that was the subject of your testimony
19 at the confirmation hearing. And I wanted to ask you a
20 follow-up question about one aspect of the Court's
21 findings. In particular, I want to read to you --

22 MR. SHIELDS: And we can perhaps, Simon,
23 if you could put this up. It's page 41 of the Court's
24 findings of fact, paragraph 135.

25 THE COURT: What page are you on?

1 MR. SHIELDS: Your Honor, it's page 41 of
2 your findings of fact. It's paragraph 135 is the only
3 one I presently intend to ask him about. I can go low
4 tech with that as long as you can follow it. May I
5 approach Mr. Fleming to show him the --

6 THE COURT: We're talking about 135? Go
7 ahead.

8 MR. SHIELDS: Yes. Here it comes. It
9 will boot up.

10 THE COURT: What part of this, the second
11 sentence or the first sentence?

12 MR. SHIELDS: Your Honor, it's the second
13 sentence.

14 THE COURT: "Other than beginning but not
15 completing an appraisal of the timberlands in 2005, the
16 largest timberland appraised by Mr. Fleming consisted of
17 just 26,544 acres and took place in 1978."

18 MR. SHIELDS: That's correct.

19 Q. (By Mr. Shields) Now, do you agree with the
20 Court's finding in that regard? Is that factually
21 correct from your perspective?

22 A. No.

23 Q. Okay. Now, would it be true if it were
24 limited to Humboldt County?

25 A. Yes.

1 Q. Okay. And in fact, just to make it clear, you
2 have been appraising large timberlands throughout
3 California during the entirety of your forestry
4 consulting career, haven't you?

5 A. I have appraised a number of large tracts,
6 yes.

7 Q. Okay. What's the largest tract that you've
8 ever been involved in appraising in California, or
9 anywhere for that matter. The Court's finding is not
10 limited to California.

11 A. Around 515,000 acres.

12 Q. Okay. Have you appraised large tracts in
13 California?

14 A. Yes.

15 Q. Okay. Are you aware of any appraiser anywhere
16 in California who's appraised more California timberland
17 properties than yourself?

18 MR. JONES: Your Honor, this is going way
19 beyond the examination today. Apparently they want to
20 rehabilitate in for the hearing we ended three weeks
21 ago.

22 THE COURT: I don't know. It may be
23 helpful. Go ahead. Continue.

24 A. I'm pretty active. It could be true.

25 Q. Okay. It is true, Mr. Fleming, that there's

1 no expert who has appeared in this case who's ever
2 appraised a California redwood timberland prior to their
3 engagement for purposes of this litigation other than
4 yourself, right?

5 A. I believe so.

6 Q. Okay. And then before I go on into some of
7 the other stuff, you used local log prices and so forth
8 in both of your appraisals, both as to the October 1
9 valuation date and the petition valuation date, correct?

10 A. Yes.

11 Q. All right. Mr. LaMont in his prior appraisal
12 used Pacific -- prices reported by the Pacific Rim Wood
13 Reporter or something of that type. Have you ever heard
14 of another appraiser relying on that publication for
15 pricing information for appraisal purposes other than
16 Mr. LaMont?

17 MR. SCHWARTZ: Your Honor, I object.
18 This is well beyond the scope. It was one thing on the
19 qualification, but this is talking about what Mr. LaMont
20 did on his prices. They're going to get a chance to
21 question Mr. LaMont. This is not anything I asked
22 Mr. Fleming about.

23 MR. SHIELDS: May I briefly -- I'm sorry.

24 THE COURT: No, it's overruled. Go
25 ahead. Ask the question.

1 MR. SHIELDS: All right. Thank you, Your
2 Honor.

3 Q. (By Mr. Shields) Can you answer the question,
4 Mr. Fleming?

5 A. No, I have not.

6 Q. Now, we can take that slide down, Simon.
7 Thank you. You were asked a number of questions on
8 cross-examination about the methodology you used and the
9 suggestion was made that -- in fact, you gave the
10 testimony that the methodology that you used for the
11 petition date appraisal that you performed was more or
12 less the same than the appraisal methodology that you
13 used in the October 1, 2007 valuation date appraisal.

14 But isn't it true that in -- mindful of what
15 the -- well, let me rephrase it.

16 The appraisal you did for the petition date,
17 you had because it was done a year and a half later, you
18 had the data that would allow you to have your valuation
19 date be squared with the relevant date for the Court's
20 purposes; i.e., petition date, right?

21 A. Yes.

22 Q. With the one exception of prices, I'll come
23 to. That is correct?

24 A. Yes.

25 Q. All right. Now, back to the October 1, 2007

1 valuation data on the previous appraisal. You heard the
2 suggestion both in cross-examination and the opening
3 statements that somehow you might have selected that
4 valuation date because it was at the top of the market,
5 at least for stock prices in some areas and on some
6 indices. Tell the Court -- remind the Court why you
7 selected the October 1, 2007 valuation date in the
8 earlier appraisal. As opposed to one that would have
9 been closer in time to the confirmation process that the
10 Court was then hearing.

11 A. Because I was asked -- I had waited to take a
12 trip up to Humboldt County to interview local log buyers
13 and collect the log sale data that I felt I needed for
14 my analysis. And I tried to wait as long as I could in
15 order to be as timely as possible. And that's -- the
16 end of September and the first part of October is as far
17 as -- as long as I could wait. So that's what I did. I
18 went up to Humboldt County and collected this
19 information.

20 Q. When you had to file the report, which I
21 recall something like March 12th, was the October 1,
22 2007 valuation date the latest one you felt that you had
23 reliable material on at the time?

24 A. That is true.

25 Q. Okay. Did you select it for any manipulative

1 purpose to manipulate the values you would come up with?

2 A. Absolutely not.

3 Q. Okay. Now, I want to segue into a related
4 issue about alleged -- I think implications of
5 manipulation that were perhaps intended in the
6 cross-examination. And that is with regard to some of
7 the data you used in the valuation for the petition
8 date. Now, you'll recall that on direct examination you
9 testified that you tried to place yourself in the
10 position of emulating what a buyer would have known as
11 of that January 18 valuation date and then do your
12 discounted cash flow analysis as of that point in time,
13 not taking advantage of information subsequently
14 learned, correct?

15 A. That's correct.

16 Q. Now, you weren't able to do that with respect
17 to one part of your data set, not entirely, correct?

18 MR. JONES: Your Honor, if we're going to
19 retry the confirmation hearing, let's at least not lead
20 the witness in doing it.

21 MR. SHIELDS: Maybe he stepped out of the
22 room. I'm entitled to lead him, Mr. Jones. And this is
23 on this --

24 THE COURT: I think we're better off to
25 just get to questions. I know that leading -- I think

1 leading works with an expert witness, works to get it
2 all in quickly.

3 MR. JONES: Very well, Your Honor. It's
4 a speech. There were three sentences in the question.

5 THE COURT: Okay.

6 MR. SHIELDS: Gosh, I have forgotten my
7 speech.

8 Q. (By Mr. Shields) The price data point that
9 you used in your petition date valuation, in that one
10 particular, were you able to stick with the perspective
11 only valuation placing yourself in the shoes of a
12 knowledgeable buyer on the petition date?

13 A. Yes.

14 Q. I thought you had to use data that went out to
15 May of 2007 to develop a starting process for your
16 analysis.

17 A. I had that data and I included that in my
18 analysis.

19 Q. Okay. But the point that I would like to
20 explore and to get some clarification on is you
21 didn't -- you did that only because you did not have
22 adequate data for January 2000 sales standing alone
23 viewed just at that point looking forward, right?

24 A. That's correct.

25 Q. Okay. Now, in Mr. Schwartz's

1 cross-examination questions, he suggested there was
2 another manipulative effort. That you took May of 2006
3 to May of 2007 prices and you cut off your post petition
4 date pricing data because May was right before the
5 prices fell off the cliff. So the follow-up question
6 is: Did you cut off the prices that you used, this
7 price trend information to develop January prices in
8 order to manipulate your result?

9 A. Absolutely not.

10 Q. Okay. And in fact, I believe it's -- if I
11 could get Marathon to put the chart back up. I believe
12 it's Marathon 97.

13 MR. NEIER: Your guy has control of the
14 screens.

15 MR. SHIELDS: Oh, he does? Okay. Page
16 1296. It's chart 12. It's the young growth redwood for
17 the period May of 2006 through May of 2007.

18 Q. (By Mr. Shields) Do you recall the chart? I
19 can show you a hard copy of it if we can't get it up on
20 the screen.

21 MR. SCHWARTZ: Is it in his proffer?

22 MR. SHIELDS: You showed it.

23 MR. NEIER: We're trying it.

24 THE COURT: We're getting there.

25 MR. SHIELDS: He may know it from memory,

1 Your Honor.

2 MR. SCHWARTZ: What page?

3 MR. SHIELDS: Okay. It's page 1296 of
4 Fleming Deposition Exhibit 2, I believe. That's another
5 way to find it. It's 1296. It's got a Bates production
6 number 1296, a Fleming Deposition Exhibit 2. And I
7 believe it was also referenced as being part of Marathon
8 Exhibit 97. You guys put it up on the screen and
9 discussed it with him. And I'll show him a hard copy.

10 Q. (By Mr. Shields) Let me see if I can go just
11 from memory. What was the price that you used in your
12 analysis as of the petition date for young growth
13 redwood?

14 A. My deliberate log price?

15 Q. Yes.

16 A. Was \$1,010 per pound.

17 Q. Okay. And didn't the table 12, I believe it
18 is --

19 MR. NEIER: Oh, table 12.

20 MR. SHIELDS: It's table 12 on page 1296.

21 Q. (By Mr. Shields) Doesn't that show a range of
22 prices from May of 2006 to May of 2007 in which the
23 young growth prices start out a little bit above -- what
24 was the dollar figure you just said, 1010?

25 A. 1010.

1 Q. 1010. And go a little bit higher?

2 MR. NEIER: That's in your client's
3 proffer.

4 MR. SHIELDS: Okay, great, give me the
5 page number.

6 Q. (By Mr. Shields) Look at your proffer.

7 A. It's table 13 on page 56.

8 Q. Okay. Of your proffer?

9 A. Of my proffer.

10 Q. All right. Look at that chart. Refresh your
11 recollection and tell the Court what the price trend was
12 in this May of 2006 to May of 2000 period that you used
13 to develop your January 2007 log prices in your --

14 A. The prices really through that period were
15 relatively stable.

16 Q. Relatively stable.

17 A. For both the small logs and the large logs.

18 Q. Okay. And so by having to develop the
19 prices -- starting prices using this bracketed May of
20 2006 to May of 2007, did you artificially inflate your
21 starting prices in your analysis?

22 A. No.

23 Q. Okay. And it's a fact, don't redwood log
24 prices in Northern California have a seasonality in the
25 dead of winter that requires some adjustments to winter

1 prices in this sort of an analysis?

2 A. As the data suggests in the second half of the
3 year, most of the timber is sold locally in the first --
4 in May, June, maybe into July to some extent. But
5 after -- after that, the sales drop off. Very few are
6 sold. If there is a sale, it might be a relatively
7 small one or there may be a reason why they sold the
8 timber.

9 Q. Okay. The general subject matter of the
10 redirect examination is the appraisal on the petition
11 date being perspective only and not being allowed or
12 appropriate to be something where you have hindsight, a
13 consideration of things you wouldn't have known as of
14 the January 18 appraisal date.

15 The particular area that I want to use to talk
16 about that point are the harvest of Doug Fir. You'll
17 recall -- do you recall Mr. Schwartz's questions where
18 he asked you -- and I think he may have misspoken. The
19 way I wrote down the question is that the Scopac mill is
20 not harvesting Doug Fir, and yet you show in your
21 petition date analysis that Doug Fir is part of your
22 harvest volumes.

23 Now, a couple of specific questions. Number
24 one, the Scopac mill doesn't actually determine harvest
25 levels. That's done by Scopac, the owner of the

1 timberlands, right?

2 A. Yes.

3 Q. Okay. And you attended Geronimo Zuniga's
4 deposition, that was the Palco log buyer that was held a
5 week or so ago, didn't you?

6 A. Yes.

7 Q. Okay. It is true that Palco at the Scotia
8 mill does not currently cut or mill Douglas Fir, right?

9 A. Currently, yes.

10 Q. But it is not true that Scotia doesn't harvest
11 Douglas Fir, correct?

12 A. Correct.

13 Q. All right. And in fact, they've had a
14 consistent percentage of harvest of Doug Fir from 2005,
15 2006 and 2007 and it's always been about 25 percent of
16 the total harvest, right?

17 A. I believe so.

18 Q. Okay. And so if the mill is not cutting it,
19 what's happening to it?

20 A. They're selling it on the open market.

21 Q. And Palco is helping them do that. You heard
22 that from Geronimo Zuniga's testimony, didn't you?

23 A. That's correct.

24 Q. All right. Of course, even if Scopac had made
25 some decision in January 2007 -- pardon me, in the

1 latter part of 2007 to quit harvesting Douglas Fir, an
2 appraiser and a knowledgeable buyer looking as of
3 January 18, 2007 wouldn't have known that, right?

4 A. That's correct.

5 Q. And an appraiser shouldn't, therefore,
6 consider it, even if you subsequently acquire the
7 information, right?

8 A. That's correct.

9 Q. And you didn't consider it and it wasn't
10 even -- it didn't even occur that way, did it?

11 A. No.

12 Q. All right. Now, while we're on the topic of
13 harvest levels, there was a line of questions about
14 whether or not you thought the harvestable timber on the
15 Scopac timberlands had increased -- was greater as of
16 the petition date than it was as of -- I think the
17 comparison was with the October 1, 2007 date.

18 I'm choosing my words carefully here. That
19 was a line of testimony that you gave about harvestable
20 timber. Whatever your testimony was on that point, and
21 the Court will recall what it was, you're not telling
22 the Court that the inventory of timber, whether or not
23 it's harvestable, actually was greater on the petition
24 date than it was October 1, 2007 given the intervening
25 growth of the forest, right?

1 A. It was greater on -- in October.

2 Q. Precisely, because of the growth of the
3 forest?

4 A. Yes.

5 Q. All right. So that's inventory to inventory
6 is one issue. Whether it's harvestable or not is a
7 different issue, correct?

8 A. That's correct.

9 Q. All right. And following up on that, you were
10 here for the opening statements, were you not?

11 A. Yes, I was.

12 Q. All right. I assume you heard the lawyers for
13 Marathon and Mendocino suggest that if the growth of the
14 timber in the Scopac forest exceeded the harvest rates
15 in 2007 and in 2008 to the current date, that would
16 necessarily mean that the value of Scopac's timberlands
17 had increased subsequent to the petition date. Did you
18 hear those statements?

19 A. I heard that.

20 Q. Okay. Do you agree with this notion that if
21 the growth rate exceeded the harvest rate, then value of
22 the forest is going to, therefore, also increase. Do
23 you agree with that proposition?

24 A. Absolutely not.

25 Q. Why not?

1 A. It's just one factor that is considered in the
2 valuation analysis. For instance, the growth could be
3 attributed the timber that's in the no cut category and
4 hence, it could not be cut and contribution to value is
5 minimal.

6 Q. By the way, I think this will come out in
7 other testimony, I won't spend a lot of time on it, but
8 even if you've got growth, you have a certain size of
9 diameter, it can be growing but it's not going to make a
10 difference in the harvest rate until it gets to cuttable
11 size, right? Loggable size, maybe that's a better word.

12 A. It's a consideration.

13 Q. Okay. Now, did you, by the way, take into
14 account in your petition date appraisal and in the
15 previous appraisal of the October 1 date of the expected
16 growth of the forest?

17 A. Yes.

18 Q. Okay. And in fact, did you assume a 3.75
19 percent growth rate in your analysis in each instance?

20 A. For the young growth material only.

21 Q. Okay. And that plugs into your analysis and
22 is taken into account, right?

23 A. Exactly.

24 Q. Okay. Now, I want to talk to you for a moment
25 about how you derive the discount rates. In particular,

1 of course, the discount rate that you use in your
2 analysis and appraisal of the value of the timberlands
3 as of the petition date and the \$646 million appraisal
4 figure that you came up there.

5 Remind the Court. Did you use the same
6 discount rate on the valuation that had the petition
7 date value date; i.e., January 18, as you did ten --
8 almost ten months later with the October 1 valuation
9 date that was part of your testimony and appraisal
10 report in the confirmation proceeding?

11 A. Yes.

12 Q. Okay. Now, do you recall that Mr. Schwartz
13 showed you the page out of your work papers that was, I
14 think, the St. Louis Federal Reserve data and it showed
15 ten year treasury rates over time and some other
16 interest rates and it showed them trending downward in
17 the period shown on the chart. It speaks for itself.
18 But certainly it included 2007. Do you remember that
19 chart?

20 A. Yes.

21 Q. Okay. Now, what you used in deriving the
22 discount rate for your analysis in both instances was
23 the BAA bond, right?

24 A. Yes.

25 Q. Tell the Court why you thought that was the

1 appropriate benchmark or reference to use in taking into
2 account market risk in coming up with a discount rate.

3 A. As I indicated earlier, that is a rate that is
4 readily available. It has a certain amount of risk in
5 it. It is a medium quality bond. I wouldn't want to go
6 too far higher in the risk where I have more or less
7 junk bonds. And to me that was -- that is a good
8 benchmark, as is indicated, in order to come to a
9 conclusion about the market interest rate or market
10 portion of my discount rate.

11 Q. Okay. Now, you didn't select the BAA bond
12 just for your analysis on the petition date and for the
13 October 1 date, did you? I mean, that's something you
14 used before in your work, isn't it?

15 A. It is. But I review it and consider other
16 alternatives, but this is the one that seems the most
17 Gropper for me. And I've used it on a regular basis.

18 Q. But the point I'm trying to get you to clarify
19 for the Court, you didn't deviate from a normal
20 appraisal approach in which you have determined that the
21 BAA is a good benchmark for looking at market risk just
22 for this case, did you?

23 A. No.

24 Q. Okay. And in fact, a lot of other appraisers
25 of timberlands use the BAA bond in coming up with a

1 discount rate, don't they?

2 A. They probably consider it.

3 Q. Okay. Now, despite the downward trend of
4 other interest rates during 2007, what happened to the
5 rate on the BAA corporate bonds that you used as the
6 benchmark in deriving -- you know, in considering market
7 risk for your discount rate determination? What
8 happened to that during the period 2006-2007? Did it go
9 up, down or stay the same?

10 A. At 1/18/07 it was 6.52 percent. October 1,
11 from my October appraisal it was 11 basis points higher,
12 5.63. And I believe that on June 6th of this year it's
13 7.02.

14 Q. That much? It's gone up again?

15 A. Since October, yes.

16 Q. Okay. But my point is: Our opponents, the
17 IT's opponents argue that downward trending interest
18 rates should mean that the discount rates are going
19 down, but in fact the BAA bond that you used in your
20 analysis and that you commonly use didn't go down, it
21 actually went up, correct?

22 A. It was trending up, yes.

23 Q. Okay. Was that an important factor to you in
24 deciding to use the same discount rate on your valuation
25 as of the petition date as you had done on your

1 valuation that had the October 1 date?

2 A. No.

3 Q. Okay. Did you find any change in the company
4 specific risk between October 1, 2007 and the earlier
5 date of the petition date that suggested that you needed
6 to use a different discount rate?

7 A. I considered everything, but I did not change
8 any other components.

9 Q. Okay. You were asked a number of questions
10 about your procedure in developing your discount rate
11 for your petition date analysis, and whether or not it
12 was appropriate for you to use the discount rates that
13 might be implied in timberland transactions. Do you
14 recall that line of questioning?

15 A. Yes.

16 Q. All right. With respect to the comparables,
17 so called comparables that were listed in Marathon
18 Exhibit 97, if that can be shown. It's table 12, I
19 believe, of Marathon Exhibit 97.

20 MR. NEIER: Is that the LaMont
21 declaration?

22 MR. SHIELDS: My notes may not be perfect
23 but that's the way I wrote it down. It's Marathon
24 Exhibit 97, LaMont's report, table 12. In the interest
25 of time -- okay. There it is.

1 MR. PENN: Tell me in advance, I can find
2 them faster.

3 MR. SHIELDS: I'm sorry, John.

4 Q. (By Mr. Shields) You recall the questions you
5 were asked about Mr. LaMont's report and the
6 transactions that he used in deriving a discount rate
7 for his analysis, and you testified that you did not
8 consider them comparable because they were Oregon and
9 Washington sales and they were different species.

10 Now, are there other reasons why you do not
11 consider those other transactions as being comparable
12 enough to use in trying to derive a discount rate for
13 your analysis?

14 A. Yes.

15 Q. And what are those other reasons?

16 A. We've got the location, you've got the size,
17 you've got growth rate differentials, you have --
18 obviously we have the species differential. And
19 location, again, that they're not in California, among
20 other differences.

21 Q. In fact, you didn't consider -- Mr. LaMont
22 also used comparable sales in coming up with his overall
23 valuation figure in the work that he submitted in the
24 confirmation process, right?

25 A. Yes.

1 Q. But again, to remind the Court, you don't
2 believe there are enough -- that there are any true
3 comparables to the 200,000 acre redwood timberlands that
4 Scopac has, right?

5 A. That's correct.

6 Q. Do you believe that the comparables that
7 Mr. LaMont mentions in his report that are Oregon and
8 Washington sales can somehow be made comparable by using
9 a one percent California fudge factor like he did?

10 A. No.

11 Q. Okay. I think one last question on harvest
12 rates. You'll recall that Mr. Schwartz asked you
13 questions about how could you use 82 million board feet
14 in the first nine years of your analysis for the
15 petition date when in 2007 Scopac only harvested 74
16 million. Okay.

17 Now, follow-up question. If you're trying to
18 do valuation of the petition date with what a buyer and
19 an appraiser know as of that date, would you have
20 known -- could you have known on January 18, 2007 that
21 despite having authority under Option A to harvest 106
22 million board feet they would only end up harvesting 74?

23 A. I would not know that.

24 Q. You would not have known that. All right.
25 And in fact, in deriving, coming up with your 88 million

1 board feet, I assume that you looked at what had been
2 harvested in 2005, which was like 147 million board
3 feet, right? And 2006 which was 100 million board feet,
4 right?

5 A. My estimate of the petition date was 82
6 million roughly.

7 Q. Okay. Thank you. But my point is, if you're
8 on the petition date trying to project harvest rates and
9 you don't know what the company is going to end up doing
10 in 2007, 82 million was something I assume you derived
11 from looking at the recent harvest levels, am I correct?

12 A. I did my analysis of the -- of the timber by
13 WAA. I was aware of what they had harvested. My
14 analysis was independent of what they harvested
15 previously or after.

16 Q. Is it completely irrelevant to a Gropper
17 valuation as of the petition date to show that harvest
18 levels after the appraisal date came in lower than what
19 one would have reasonably expected and used in trying to
20 do a look forward only valuation as of January 18?

21 A. Totally irrelevant.

22 MR. SHIELDS: Okay. That's all I have,
23 Your Honor.

24 THE COURT: All right. Let me just ask
25 you a couple of questions. So the difference between

1 your January and October appraisal boils down to when it
2 comes to additional costs, it was insignificant, right?
3 That's what you said.

4 THE WITNESS: It is in reality, yes.

5 THE COURT: Okay. So the only
6 significant difference is is that you believe that an
7 appraisal in January would have started with 82 million
8 board feet rather than 81 in October.

9 THE WITNESS: That's correct.

10 THE COURT: So the amount of timber that
11 you could harvest, you believe a reasonable appraiser
12 would find was more in January than in October by 1
13 million board feet per year.

14 THE WITNESS: Yes, my analysis is exactly
15 the same in the two dates of value. The only difference
16 is I started with a different volume because I went back
17 to the original volumes that I had been given, that were
18 given to me by Scopac foresters.

19 THE COURT: And how did you come up with
20 the volume in October? You subtracted from the volume
21 the amount they had cut up to October?

22 THE WITNESS: Yes, Your Honor. The 63
23 million that they cut in that first nine months, I
24 subtracted that as of the first of the year and then
25 grew that volume to October 1.

1 THE COURT: So somehow you found that
2 they had -- by cutting 63 million in the time period
3 between January and October, that that resulted in a net
4 of 1 million board feet less per year starting in
5 October than starting in January.

6 THE WITNESS: Yes.

7 THE COURT: Okay. And then the other
8 difference is a difference in price?

9 THE WITNESS: The difference in delivered
10 log prices, yes, sir.

11 THE COURT: So what was the base price
12 you started with in January? 1010?

13 THE WITNESS: No, that would have been my
14 estimate. 1010 would be in January 11, yes -- January
15 18.

16 THE COURT: Okay. Your January price,
17 starting price for logs.

18 THE WITNESS: That's for young growth
19 redwood.

20 THE COURT: Okay. What was your starting
21 price in October?

22 THE WITNESS: 975 for young growth
23 redwood.

24 THE COURT: All right. Was there any
25 significant difference from any of the others?

1 THE WITNESS: They all changed.

2 THE COURT: And they all went down
3 between January and October?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: As a starting price? And is
6 it -- is there any difference between -- seasonally
7 between January and October?

8 THE WITNESS: Well, as I indicated
9 earlier, in January seasonally there's not very many
10 sales, a few, because of weather, the log decks are full
11 and most people don't sell logs. October --

12 THE COURT: Okay. So were there any
13 other differences between the two? That accounted for
14 all the difference in the price; is that true?

15 THE WITNESS: Yes.

16 THE COURT: Okay. You can step down.
17 Next witness.

18 MR. SHIELDS: Your Honor, the Indenture
19 Trustee calls John Young as an adverse witness.

20 THE COURT: All right.

21 MR. STRUBECK: Your Honor, before that
22 happens, I was wondering if you had a chance to think
23 about what you were going to do.

24 THE COURT: I did, and I read the proffer
25 and I don't believe, as much as Mr. Emerson is certainly

1 qualified and knowledgeable in the area of cutting and
2 operation of mills, there's no question about that, and
3 while he certainly may well be and may in the future
4 become very important to the case, I don't believe that
5 his testimony has elicited in this particular proffer is
6 relevant to this issue today, so I won't allow it.

7 MR. KLEIN: May we be excused, Your
8 Honor?

9 THE COURT: You may.

10 MR. KRUMHOLZ: Just for purposes of a
11 bill, we'd like to offer the declaration of Mr. Emerson
12 just for purposes of a bill to be admitted for that
13 purpose only.

14 THE COURT: Well, we can attach a copy of
15 the Emerson proffer to the record and there can be an
16 appellate issue or whatever you want to call it. So go
17 ahead. Now we're on who, Mr. Young?

18 MR. SHIELDS: Yes, Your Honor.

19 THE COURT: Come forward and sign in,
20 please.

21 JOHN YOUNG, JR.,
22 having been first duly sworn, testified as follows:

23 MR. SHIELDS: Your Honor, Todd Shields,
24 Fulbright & Jaworski, Houston for Bank of New York
25 Indenture Trustee for the timber notes. Has the witness

1 been sworn, Your Honor?

2 THE COURT: He has. You're on.

3 DIRECT EXAMINATION

4 BY MR. SHIELDS:

5 Q. Introduce yourself to the Court, please.

6 A. My name is John Thomas Young, Jr. I'm the
7 chief financial officer of Scopac.

8 Q. Where do you live?

9 A. Houston, Texas.

10 Q. Houston, Texas. You've already identified
11 your position with Scopac as being the chief financial
12 officer. Are you also employed by the firm Xroads?

13 A. I am.

14 Q. How long have you been the chief financial
15 officer of Scopac?

16 A. Since May of 2008.

17 Q. And your familiarity with Scopac and its
18 business and the related business of Pacific Lumber
19 Company actually predates your position as chief
20 financial officer, does it not?

21 A. It does.

22 Q. Describe that to the Court. When did you
23 first get involved in working with Scopac or its
24 affiliates?

25 A. March 2007.

1 Q. And what caused you to have that opportunity?

2 A. My firm, Xroads Solutions Group was retained
3 as financial advisor to both Palco and Scopac to provide
4 accounting related and bankruptcy support to the
5 debtors.

6 Q. And the date is March of 2007, did you say?

7 A. Correct.

8 Q. Okay. Now, you have signed and sworn to -- I
9 guess you don't swear to, but you sign to a declaration
10 in this case in response to the Indenture Trustee's
11 motion for a section 507(b) super-priority
12 administrative claim, correct?

13 A. Yes, sir, I did.

14 Q. I want to -- let me get some more background.
15 I'm sorry. We know who you work for, we know your
16 current title, but I think the Court might find it
17 beneficial to know a little bit about your background.

18 First of all, what's your educational
19 background?

20 A. I have a bachelor's of business administration
21 from Baylor University and an MBA from Baylor
22 University.

23 Q. And what years were those degrees received?

24 A. '95 and '97.

25 Q. And after receiving your MBA degree, what did

1 you start doing work wise?

2 A. I was employed by KPMG Peat Marwick
3 approximately one year. And then was employed by Lone
4 Star Opportunity Fund for approximately one year. Then
5 in 1999 joined Xroads.

6 Q. And what has your work for Xroads been in
7 general? What areas?

8 A. I generally provide financial advisory
9 services to debtors.

10 Q. All right. When you say "debtors," I take it
11 you mean entities who carry the status of debtor in
12 bankruptcy proceedings?

13 A. That's correct.

14 Q. All right. I take it then that you're very
15 familiar with the type of monthly operating report that
16 a debtor in bankruptcy often files with the Court as
17 required under statutes, procedures and practices,
18 correct?

19 A. Correct.

20 Q. And have you, in fact, had that responsibility
21 for Scopac since you have been their chief financial
22 officer?

23 A. I have.

24 Q. And tell me what has to be -- and I'm now
25 going to be talking just about the Scopac monthly

1 operating reports. You call those MORs? What do you
2 call those?

3 A. I don't but some do.

4 Q. Somebody said you did. Okay. Anyway, I'll
5 call them monthly operating reports, if that's all
6 right. The ones that Scopac is required to file in this
7 proceeding, what is -- what is the required content,
8 just in general?

9 A. General information from the financial
10 statements of the debtor as well as aging information of
11 the accounts receivable and accounts payable, as well as
12 a detail of cash receipts and disbursements on a monthly
13 basis. There is also a schedule detailing payments made
14 to insiders and professionals. And another schedule
15 that shows the summary of the activity affecting the
16 bank accounts. So the -- the cash flow activity by
17 account.

18 Q. This is going to be a who's buried in Grant's
19 tomb question, but how often do you have to file those
20 monthly operating reports?

21 A. Once per month. You can keep those questions
22 coming, by the way.

23 Q. Now, in all seriousness, filing a monthly
24 operating report in a bankruptcy proceeding is a serious
25 matter because it's filed under strict penalties if it's

1 incorrect or false, right?

2 A. It is.

3 Q. Is that right?

4 A. Yes.

5 Q. And you take the responsibility seriously and
6 you're the one that has to sign them, right?

7 A. Now, yes.

8 Q. Did you attach to your declaration -- and by
9 the way, do you happen to have your declaration with
10 you?

11 MR. SHIELDS: Simon, can we put Exhibit C
12 to the declaration of John T. Young up.

13 A. Mr. Shields, I do have it. I just want to
14 make sure I have the exhibits. But I have it.

15 Q. Okay. And if you don't, we might could scare
16 up a copy for you. Do you have it with the exhibits?

17 A. Yes, I do.

18 Q. Okay. For the record, I don't have it handy,
19 the exhibit number, but I'm assuming that --

20 SPEAKER: 54.

21 MR. SHIELDS: Which is it? 53?

22 MR. NEIER: 54.

23 MR. SHIELDS: 54. Okay. So this would
24 be Scopac 54. Is that the way it's numbered? All
25 right. Let's look at page 2 of 10, Simon, of Exhibit C.

1 MR. KRUMHOLZ: Just for the record it's
2 IT Exhibit 54.

3 MR. SHIELDS: Thank you. IT 54. It's
4 probably Scopac something or other, too, but it's IT 54.
5 Thank you.

6 THE COURT: These are the monthly
7 operating report entering May 31, 2008? Is that what
8 you want me to look at?

9 MR. SHIELDS: Yes, Your Honor. It's
10 numbered at the bottom page 2 of 10 and somehow it left
11 the screen.

12 THE WITNESS: I now have a picture of the
13 Judge. That's better.

14 Q. (By Mr. Shields) All right. I want to --

15 THE COURT: You think that's better than
16 a picture of me?

17 THE WITNESS: I'm sorry. It's more
18 helpful and appropriate.

19 Q. (By Mr. Shields) To identify for purposes of
20 those participants on the telephone what we're talking
21 about, we're now in Exhibit C, page 2 of 2 of IT -- 2 of
22 10 of IT Exhibit 54. It's a document that is entitled
23 "Scopac Pacific Company, LLC MOR-2 comparative balance
24 sheets month ended May 31, 2008." Did I accurately
25 describe what we have up on the screen right now in the

1 courtroom?

2 A. Yes.

3 Q. Now, I notice that going left to right you
4 have six columns. The column to the left is a filing
5 which you labeled as a filing date column, January 18,
6 2007. And then you have the five months of -- first
7 five months of 2008 that then go from left to right
8 adjacent to that, correct?

9 A. Correct.

10 Q. All right. So what that allows us to do is to
11 look at the filing date column in some of these
12 categories, and this is a page that lists assets,
13 correct?

14 A. Correct.

15 Q. And we can see what they were as of the
16 petition date, January 18, and then we can look to the
17 far right and see what they were as of May 31, correct?

18 A. That is correct. I would like to say,
19 however, that the information in the column to the left,
20 the filing date column, was prepared such that it ties
21 to the schedules of assets and liabilities, which I did
22 not prepare. Just for clarification.

23 Q. That's okay. It's under penalties of perjury,
24 I want you to be able to clarify what's in it. That's
25 fine. Thank you for that.

1 And also, while we're just talking about
2 housekeeping matters, in your declaration, you've
3 updated the data beyond May 2008, haven't you, or maybe
4 I'm -- I've seen a lot of declarations in the last day
5 or two. Maybe I'm not remembering that. Is this the
6 latest information you filed with the Court?

7 A. Yes, it is. There is some updated information
8 contained in my declaration, but it is not an updated
9 monthly operating report.

10 Q. Fair enough. Now, let's look under the
11 current assets column, the line that is entitled cash.
12 It's --

13 MR. SHIELDS: Simon, if you can highlight
14 that. The cash line.

15 Q. (By Mr. Shields) Okay. What was the cash
16 that Scopac had as of the petition date as reflected in
17 Scopac's monthly operating report that's just been put
18 up on the screen, the page of that report? What's the
19 amount?

20 A. May I call it \$46.9 million?

21 Q. Yes. And according to the monthly operating
22 report that you signed as of the end of May, 2008, what
23 was the cash position of Scopac as of that day?

24 A. Approximately \$5.0 million.

25 Q. So that's a diminution of \$41 million in cash

1 during the pendency of the bankruptcy proceeding as
2 reflected in Scopac's own monthly operating reports
3 filed with the Court, correct?

4 A. I cannot answer that -- correct. There's one
5 exception here that I should point out.

6 Q. If it's a footnote, I'm going to get to it.
7 Does it have anything to do with that?

8 A. No, sir.

9 Q. Okay. What's the exception?

10 A. In the -- in the \$46.9 million, as of the
11 petition date, that number does include the A-1 timber
12 notes of approximately \$2.8 million.

13 Q. Okay.

14 A. So I would like at \$46.9 million less the
15 approximate \$2.8 million in timber notes and compare
16 that number to the \$5 million at the end of May.

17 Q. Okay. This is not a big point with me, but
18 your footnote 3 doesn't reflect that you took the timber
19 notes, the \$2.7 million worth of timber notes out of the
20 cash column as of the filing date, does it?

21 THE COURT: Footnote 3 is about
22 investments, not under cash.

23 MR. SHIELDS: Right. Well, that was sort
24 of my point, Your Honor.

25 THE COURT: Okay. Never mind.

1 A. Could you please repeat the question?

2 Q. Okay.

3 A. I'm sorry.

4 Q. Should I have understood -- maybe I just
5 didn't understand the table. Should I have understood
6 that the \$46,888,930 included that \$2.7 million timber
7 note from the footnote 3 that you have there? Did you
8 intend to communicate that?

9 A. What I can tell you is that it does contain
10 the \$2.8 million of A-1 timber notes.

11 Q. Okay. So let's take out the 2.7 from the
12 46.9, just for purposes of illustration. And that's
13 \$44.2 million, correct?

14 A. That's correct.

15 Q. And comparing that to the cash position you
16 reported as of the end of May 2008, that's a \$39.2
17 million difference, correct?

18 A. Yes, sir, that's correct.

19 Q. Now, I want to -- by asking you questions that
20 take you through the Scopac monthly operating report,
21 put before the Court what Scopac's records and monthly
22 reports reflect happened to this \$39.2 million in cash
23 during the pendency of the bankruptcy proceeding.

24 Look at page --

25 MR. SHIELDS: Simon, if you'll put page

1 10 of this monthly operating report.

2 THE COURT: Page 10?

3 MR. SHIELDS: Yes, Your Honor. It's
4 still Exhibit C, page 10 of 10. It's entitled payments
5 to insiders and professionals, month ending May 31,
6 2008.

7 Q. (By Mr. Shields) Looking at this portion of
8 your monthly operating report, what does it show the
9 total payments have been to professionals during the
10 Scopac Chapter 11 case through May 30, 2008?

11 A. Approximately \$25.7 million.

12 Q. And that would be the figure on the bottom
13 line, total professionals filing to date \$25,713,443,
14 correct?

15 A. Correct.

16 Q. All right. Now, how much of the \$25.7 million
17 in professional fees that Scopac has paid during the
18 pendency of this bankruptcy proceeding would have been
19 paid to Indenture Trustee professionals? And in that
20 regard, I'll direct your attention to Exhibit D of the
21 monthly operating report, and ask Simon to put that up
22 on the screen.

23 THE COURT: Is it the last one?

24 MR. SHIELDS: Yes, Your Honor. It's
25 entitled Scopac professional fees-total payments. And

1 it's Exhibit D to the declaration of John Young that's
2 IT Exhibit 54.

3 A. My I point out that these are two different
4 dates? The monthly operating report is as of May 31st.
5 And this exhibit is as of June 27.

6 Q. Well, I'm --

7 A. Just for clarification.

8 Q. Okay. Thank you. Actually, I'm offering it
9 for the purpose of showing who the IT's professional
10 fees were and how they were comprised, which I think is
11 broken down as of the 5/30/2008 date, if I can get it
12 up. Can you see that, Mr. Young?

13 A. I have it in front of me, that's okay. I
14 don't have it here but this should be fine.

15 Q. Okay. And the -- as shown on this Exhibit D,
16 what's the total amount that has been paid by Scopac to
17 IT professionals as of May 30, 2008?

18 A. I'm sorry to be --

19 Q. Let me go through and point who I think --

20 A. It's the date, the date is the issue.

21 THE COURT: Isn't it \$8.9 million?

22 MR. SHIELDS: No, it should be -- well,
23 I'm looking at the wrong page, I think is the problem
24 here. Go back to page --

25 THE COURT: You're asking how much has

1 been paid to the Indenture Trustee professionals?

2 MR. SHIELDS: Right. Correct. As of May
3 30, 2008.

4 THE COURT: McCutchen, Forest Biometrics,
5 Fulbright & Jaworski, J.E. Fleming, Rayonier.

6 MR. SHIELDS: Right. Exactly.

7 THE COURT: \$8.9 million.

8 A. I need to point out that Exhibit D is as of
9 June 27th, not May 31st.

10 Q. And as of the earlier date of May 30 would it
11 be the lower number of 5 million 4?

12 A. I would have to do the math to add these up.

13 Q. Do you happen to have a calculator?

14 A. Yes, sir, I do.

15 Q. Okay. Good.

16 THE COURT: So you want him to pull out
17 of the amounts paid to date to professionals that's
18 equal to this same list?

19 MR. NEIER: Your Honor, if it would be
20 helpful, we actually did the calculation, Mr. Penn and
21 I, and we can put it up on the screen for the witness to
22 look if that's okay. We did it over lunch.

23 MR. SHIELDS: Go ahead.

24 THE COURT: So how much is it? Tell us.

25 MR. NEIER: It's \$7 million -- it's about

1 \$1.7 million difference.

2 THE COURT: From the month between
3 whenever this May 31st and June 27th, they got paid
4 about a million something odd more; is that correct?

5 MR. NEIER: Yes, Your Honor. If you can
6 switch to our screen, we will put it up. It's
7 \$1,789,000. This is from -- this is from the Exhibit D
8 of the witness and this is from the monthly operating
9 report.

10 THE COURT: And you just happened to
11 calculate that?

12 MR. NEIER: We did it over lunch because
13 we were going to ask the witness the same question.

14 THE COURT: Okay.

15 Q. (By Mr. Shields) Okay. What I want you to
16 do, Mr. Young, is to take the fees that Scopac paid to
17 all professionals through May 30 as shown on Exhibit C,
18 page 10 of 10 I believe it is, of \$25,713,443 and deduct
19 from that the amount of the fees that were paid to
20 Scopac professionals through May 30, 2008.

21 A. May I please see Mr. Neier's schedule again.

22 THE COURT: Mr. Neier, if you'll do that
23 for us, you'll be our calculator.

24 MR. NEIER: That's not a good idea, Your
25 Honor, but --

1 THE COURT: Okay. Then put the guy
2 beside you on it.

3 MR. PENN: I couldn't follow the
4 question.

5 THE COURT: Just subtract -- you got that
6 figure on the monthly operating report subtracted from
7 \$25,713,443.

8 A. I have the number here, it's \$18,585,780 if
9 we're going to take this down to dollars.

10 Q. Could you repeat that, Mr. Young?

11 A. Yes, sir. \$18,585,780.

12 Q. Okay. Let's look at the fees that have been
13 paid to Gibson Dunn & Crutcher that appear on page 10 of
14 10 of your Exhibit C. And can you confirm that those
15 fees as shown on this report were \$7,265,432?

16 MR. NEIER: I'm sorry, did you say
17 Exhibit D?

18 MR. SHIELDS: No, it's Exhibit C, page 10
19 of 10.

20 A. That is correct.

21 Q. Now, as of that date, was Scopac proposing a
22 plan to which the Indenture Trustee was objecting?

23 A. I believe that that date the Scopac plan had
24 been withdrawn.

25 Q. All right. What was the date the Scopac plan

1 was withdrawn?

2 A. I don't know the exact date.

3 Q. All right. I think it was May 1st or May 2nd.

4 If you assume that, what portion of the fees paid to
5 Gibson Dunn & Crutcher were paid at a time in which they
6 were proposing a plan to which the Indenture Trustee was
7 objecting?

8 A. I don't believe I have the data in front of me
9 to answer your question accurately.

10 Q. Would it be all of the fees incurred up to
11 that date?

12 A. I'm sorry?

13 Q. All it would be would be the fees that were --
14 it would be all of the fees incurred by Gibson Dunn as
15 shown through May 30, 2008 less the May fees, if you
16 accept my representation, that they withdrew their plan
17 on May 1.

18 MR. JONES: Your Honor, I'm sorry. I
19 think the question is confusing. Is Counsel including
20 time before any plan was proposed? I'm not sure what
21 he's asking.

22 THE COURT: So you want -- how much time
23 when there was no Scotia Pacific plan on the table or
24 how much time from the date this case was filed to the
25 date when they withdrew their plan? I'm not sure where

1 we're going.

2 MR. SHIELDS: Okay. What I was trying to
3 establish is that up until they withdraw their plan, the
4 fees that were being spent by Scopac and paid to Gibson
5 Dunn were not benefiting the Indenture Trustee because
6 of the adversity of the parties up to that point in
7 time, but I can -- I can move on.

8 Q. (By Mr. Shields) All right. Let's go back to
9 page --

10 THE COURT: I think we can stipulate that
11 the Indenture Trustee has been adverse to both Scopac
12 and Palco until Scopac withdrew their plan.

13 MR. SHIELDS: Perfect. It works for me.

14 Q. (By Mr. Shields) All right. Looking at
15 -page?

16 MS. COLEMAN: Your Honor, I'm sorry,
17 Kathryn Coleman. I can't stipulate to that.

18 THE COURT: I think you're right. They
19 had a fiduciary duty to everyone. But there have
20 certainly been a lot of fighting between those two
21 sides. In a legal sense, I guess, we can't really say.

22 Q. (By Mr. Shields) Okay. Look back at page 2
23 of 10 of Exhibit C, which is the chart that shows
24 assets. And explain to the Court, first of all, why --
25 what previously had been characterized as cash in

1 monthly operating reports was reclassified to a
2 different characterization which I believe is
3 investments.

4 A. It was determined at the time that we were
5 releasing the April monthly operating report that
6 investments held in auction rate securities and also the
7 A-1 timber notes were not liquid, as once thought. And
8 therefore, we moved those to investments because it
9 would be inappropriate to show them at that time as a
10 cash or cash equivalent.

11 Q. Okay. So given that the auction rate
12 securities and the \$2.7 million in timber notes were
13 illiquid, you thought it appropriate as the chief
14 financial officer to reclassify them from cash to the
15 category of investments, correct?

16 A. Correct. Perhaps if you like I could read my
17 footnote.

18 Q. Certainly.

19 A. Okay. "In the month of April 2008 it was
20 determined that auction rate securities held the debtors
21 SAR account and other Bank of New York accounts have
22 become illiquid due to a change in market conditions.
23 As a result, \$24 million was classified for cash to
24 investment on MOR-2 of this document. Furthermore,
25 during the same period it was determined that

1 repurchased A-1 notes held in the debtor's SAR account
2 may be subject to certain regulatory approval prior to
3 sale, therefore, an additional \$2,763,175, the face
4 amount of such timber notes was reclassified from cash
5 to investment on MOR-2 of this document. As of May
6 28" -- and this is the footnote for the May report. "As
7 of May 28, no reserves for potential loss have been
8 established."

9 Q. Okay. To recap, this decision that you made
10 reclassifying from cash to investments, the auction rate
11 securities and the A-1 notes were \$24 million of what
12 used to be cash was reclassified as investments because
13 they were in auction rate securities, right? Isn't that
14 what you just said in your footnote?

15 A. Right.

16 Q. And then \$2.76 million in the A-1 notes were
17 also no longer counted as cash and put into the
18 investment category, right?

19 A. That's correct.

20 Q. All right. Have you made any recent effort to
21 sell the auction rate securities that are -- the \$24
22 million or so that are referred to in footnote 3?

23 A. We have.

24 Q. And what were the results of that effort?

25 A. This is part of evaluating the feasibility of

1 using a DIP. We looked alternatively at trying to sell
2 the auction rate securities that we currently hold,
3 thinking that if the discount that we would incur on
4 selling the auction rate securities was less than the
5 fees, that we would be required to pay on the DIP that
6 it would make more sense to simply monetize the auction
7 rate securities. I had an analyst at my firm spend
8 approximately a week doing research on this issue and
9 trying to -- well, in going to market to sell the
10 auction rate securities.

11 And what we found was that the three tranches
12 of auction rate securities, two of them are not fully
13 guaranteed by the U.S. Government. We received no
14 indications of interest on those. And those total \$18
15 million of the 24 face. There are another \$6 million
16 which I'll refer to as PHEAAs. And for the record I'll
17 spell that, P-H-E-A-A.

18 Q. I'm sorry, Mr. Young, can you repeat that
19 spelling?

20 A. P-H-E-A-A.

21 Q. Thank you.

22 A. Please don't ask me what that stands for, it's
23 Pennsylvania something. And we did receive three
24 indications of interest. And what I would call soft
25 bids on the \$6 million PHEAAs. Those soft bids or

1 indications of interest came in at, I believe, 66 cents
2 on the dollar or 67 cents on the dollar and 70 cents on
3 the dollar. I should supplement that by saying that I
4 did receive a call from Delona Moore of Maxxam last week
5 suggesting that she --

6 Q. Excuse me for a moment. I don't want you to
7 testify as to hearsay. I want to --

8 A. That's fair.

9 Q. -- know about your efforts to monetize these
10 auction rate securities. Let's go back. Three
11 indications of interest and one soft bid.

12 A. The same thing. I'll use those terms
13 interchangeably.

14 Q. Okay. In other words, you did not receive a
15 single firm bid to buy the auction rate securities,
16 correct?

17 A. That's correct.

18 Q. All right. And with respect to the
19 indications of interest or soft bid, the -- is it a
20 total of four, three indications of interest, one soft
21 bid? Is there a gradation there in your mind as you're
22 using those terms?

23 A. Let's say three soft bids or three indications
24 of interest. They are the same thing in my lexicon.

25 Q. Okay. But nothing you would characterize as a

1 firm bid or firm offer, correct?

2 A. Correct.

3 Q. And would those have been only with respect to
4 the tranche of auction rate securities that is fully
5 government insured?

6 A. That's correct, the PHEAAs.

7 Q. And that's a \$6 million tranche, right?

8 A. Yes, sir.

9 Q. And whereas the other two tranches you
10 identified that are not fully insured and comprised \$18
11 million of the \$24 million, you got nothing, no firm
12 bid, no soft bid, no indication of interest, nothing,
13 right?

14 A. (No response.)

15 Q. To summarize, the May 2008 monthly operating
16 report shows something like -- and I haven't written the
17 figures down where I can put my hands on them right now,
18 but slightly less than \$20 million of professional fees
19 if you net out the IT professionals, correct, and \$26.7
20 million of auction rate securities and restricted timber
21 notes for a total of about \$45 million in cash that's
22 gone out of Scopac since the petition date, right?

23 A. I have to do the math again to answer that.
24 You said the -- I'm sorry, could you please --

25 Q. What I want you to do is summarize for the

1 Court the amount of cash --

2 THE COURT: When did they buy the auction
3 rate securities? Do we have that date? Do you know
4 when they were bought?

5 THE WITNESS: I do not. I only know that
6 they were considered for reinvestment some time in May.

7 THE COURT: Well, I mean, at the time of
8 the petition, did you have whatever million in auction
9 rate securities?

10 THE WITNESS: I don't know.

11 THE COURT: You don't know. Okay.

12 MR. SHIELDS: I think they are renewals
13 of the existing auction rate securities that preceded
14 the petition date, but --

15 THE COURT: Okay.

16 Q. (By Mr. Shields) By the way, do you know who
17 was responsible for purchasing the auction rate
18 securities that you identified?

19 A. I do not.

20 Q. With respect to cash in the so-called SAR
21 account, who controls the SAR account?

22 A. When you say "control," could you please
23 explain that?

24 Q. Well, do you currently control the SAR account
25 in the sense that you make the decision for Scopac as to

1 what it's going to seek approval to do with cash in the
2 SAR account?

3 A. No, sir.

4 Q. Who does?

5 A. I don't know. What I do know is if I need
6 money transferred in or out of the SAR account, that I
7 have to call Maxxam and then they are the ones who are
8 able to initiate those transfers. But beyond that, I'm
9 not certain.

10 Q. And based on the -- your prior dealings with
11 Scopac, has that been the case for some period of time?

12 A. Yes.

13 Q. Okay. Let's, again, I want to -- you were
14 here for the opening statements, weren't you?

15 A. I was.

16 Q. In the case? Okay. You may recall that there
17 was some suggestion in the opening statements by counsel
18 for Marathon that what has happened since the petition
19 date is that cash of \$46 million, or less the A-1 timber
20 note of \$2.7, the adjusted cash at the time of the
21 petition, the \$43 million plus or so did not really go
22 down just to \$5 million, it sort of got morphed into
23 working capital or other forms of assets that appear on
24 the monthly operating report that we see on the screen.
25 So I want to go through that with you and talk about

1 some of these other categories of assets.

2 Let's start first with the accounts
3 receivable. The accounts receivable, as of the petition
4 date, were \$1,834,401, correct?

5 A. That's correct.

6 Q. And do you know what that accounts receivable
7 is?

8 A. It's my understanding that's the prepetition
9 receivable from Pacific Lumber for log sales.

10 Q. And that has never been paid, right? That's
11 something that Palco owes Scopac and Palco has never
12 paid, right?

13 A. That's correct.

14 Q. In fact, isn't -- how much of the total of the
15 account receivable that are shown in the right-hand
16 column that's \$11.1 million represent amounts that Palco
17 owes Scopac? How much of that \$11 million?

18 A. To my knowledge, it's all of it.

19 Q. It's all of it?

20 A. It's all Palco.

21 Q. Okay. Now, that's listed as accounts
22 receivable net. What's -- what's the fair value of
23 those \$11 million in receivables? It's less than \$11
24 million, isn't it?

25 A. I have not been retained to value those

1 accounts receivable nor do I feel I can opine on the
2 value of the accounts receivable. What -- go ahead.

3 Q. Whatever they may be worth, and suffice it to
4 say they're owed by a debtor, and I'm using that in a
5 laymen's sense, an entity that's in bankruptcy. Does
6 the Indenture Trustee have any security interest in
7 these accounts receivable like they did in the cash that
8 was held by Scopac at the time they filed for
9 bankruptcy?

10 A. I'm not sure I can answer that.

11 Q. Well, let me ask you this: Do you know what
12 is proposed as the handling for the Scopac accounts
13 receivable that are owed to them by Palco under the
14 Marathon/Mendocino plan of reorganization?

15 A. Under the class 6 distribution adjustment,
16 yes, sir, I'm familiar with that.

17 Q. All right. What happens to those accounts
18 receivable?

19 A. They -- the net -- the net receivables between
20 Palco and Scopac are included in the adjustment, in the
21 distribution adjustment to the Noteholders.

22 Q. Are you saying that they net them out? I'm
23 sorry. Could you explain your answer?

24 A. Well, Palco owes Scopac money and Scopac owes
25 Palco money. Scopac sells logs to Palco and Palco

1 provides services, roads and reforestation services. So
2 in the 11 -- where Palco owes Scopac \$11.2 million, I
3 would estimate that Scopac owes Palco --

4 Q. I'm sorry.

5 A. I'm just trying to get what you're asking.

6 Q. Just back up just a little bit. You're
7 explaining if Scopac owes Palco and Palco owes Scopac.
8 I want to get the numbers down.

9 A. I don't know the exact number.

10 Q. Okay. Just give me an order of magnitude.

11 A. Approximately say two and a half million.

12 Q. Is owed by which entity?

13 A. Is owed to Palco by Scopac for reimbursement
14 of roads and reforestation services.

15 Q. Okay.

16 A. And it's subject to plus or minus a million
17 dollars.

18 Q. So Palco -- if you net those out, doesn't the
19 Indenture Trustee lose whatever security interest it had
20 in the -- what Palco owed Scopac if they had such an
21 interest in the accounts receivable?

22 A. I need to make one other correction. I
23 misspoke.

24 Q. Okay.

25 A. It's the post petition. It's not the total --

1 the total net, it's the post -- actually, it would be
2 helpful if there's any way we can show the definition of
3 the class 6 distribution adjustment, that would help me
4 answer your question. Or if someone can provide me with
5 that.

6 Q. Okay. We'll work on that. I'm not -- I can't
7 do that at hand. But if we can before I pass you on to
8 other lawyers to ask questions, I'll provide you.

9 A. But it would impact your recovery by affecting
10 the amount of the distribution of the Noteholders, I
11 believe.

12 Q. Okay. Let's -- just before I leave the
13 accounts receivable, these are all accounts receivable
14 owed by an entity that is in bankruptcy to Scopac and
15 you don't have an opinion as to what their value is,
16 although I assume you'll concede they don't have -- they
17 don't have an \$11 million value?

18 A. That's -- bear with me a moment. If I go to
19 page 5 of 10 of the monthly operating report.

20 Q. Yes, sir.

21 A. I see here that approximately \$6.2 million of
22 those receivables are over 90.

23 Q. Correct.

24 A. It would be difficult for me to say that those
25 would be valued if we attempted to factor those

1 receivables at a hundred cents on the dollar. There
2 would be some discount involved simply because of the
3 age of the receivables.

4 Q. Exactly. When receivables get older,
5 experience teaches you that they are not likely to be
6 collectable, and you've got \$6 million in the over 90
7 and you got a million eight that existed as of the
8 petition date that's still there. That's a year and a
9 half old, right?

10 A. Correct.

11 Q. All right. Now, let's move on to another
12 category, the inventory. The next line, you show
13 \$526,367 as of May 2008 and you showed nothing as an
14 inventory asset at the time of the petition date. What
15 comprises this \$526,367?

16 A. That is the inventory held in -- I think what
17 we all have come to know the Scopac log deck.

18 Q. Okay.

19 A. These are logs held by Scopac on a cost basis.

20 Q. Okay. This is when Maxxam and Palco came up
21 with the idea of creating a Scopac log deck. And had
22 Scopac started doing inventorying and handling of logs
23 that had previously been handled by Palco, right, and it
24 was opposed in this bankruptcy proceeding vigorously,
25 wasn't it, by opponents of Scopac, correct?

1 A. You asked me multiple questions.

2 Q. I know I did. Just pick any one of them you
3 want and help us.

4 A. Yes.

5 Q. All right. You know enough because you're the
6 CFO about the contractual arrangements between Scopac
7 and Palco to know that under the existing master
8 purchase agreement and the new method of doing business
9 and so forth, the impact of Scopac being compelled to
10 create its own log inventory is that it does
11 inventorying of logs that it has to keep unless and
12 until Palco decides to buy them, right?

13 A. I don't agree with that.

14 Q. Okay. Do you -- do you have an opinion as to
15 the fair market value of the Scopac inventory given the
16 contractual arrangements of Palco and Scopac?

17 A. I believe that in my declaration I address
18 that issue based on current SBU prices at the time of my
19 declaration, yes.

20 Q. And you said what in your declaration about
21 that topic?

22 A. I'm going to read from paragraph 12 of my
23 declaration.

24 Q. Okay.

25 A. "Scopac has approximately 4.4 million board

1 feet of redwood logs in inventory as of June 26, 2008.
2 Assuming these logs held in Scopac's inventory are sold
3 to Palco at the current California State Board of
4 Equalization rate for zone 1, size code 3 redwood logs
5 of \$750 per MBF will generate approximately \$3.3 of
6 revenue for Scopac excluding the reimbursement for log
7 and haul costs."

8 Q. Following up on the line in your declaration,
9 assuming they are sold, but isn't the ability to sell
10 them dependent on Palco asking to buy them?

11 A. No.

12 Q. Move on to prepaid expenses. That's a line
13 that showed us a filing date number of \$6 million and a
14 May 31 number of \$6.4 million. Do these prepaid
15 expenses, whatever their balance sheet characterization
16 is as an asset, provide any value to the Indenture
17 Trustee that the Indenture Trustee can realize?

18 A. These are generally capitalized THP costs.

19 Q. Timber harvest plan?

20 A. Yes. So I don't think it would be fair to say
21 there's an underlying tangible asset, but presumably you
22 would enjoy the benefit of those costs incurred.

23 Q. Well, I know that the accounting rules and
24 standards allow a company to characterize prepaid
25 expenses as an asset on a current balance sheet. But

1 how does that benefit an Indenture Trustee with a lien
2 on assets? They had a lien on cash. They don't have a
3 lien on prepaid expenses, do they?

4 A. It would be difficult.

5 Q. Okay. Similarly, prepaid restructuring
6 expenses. There was nothing in that category at the
7 petition date, and there's \$514,671 as of the end of
8 May. What comprises that number?

9 A. This is -- this is an issue also where the
10 first column is reflective of what's in these -- the
11 schedule of assets and liabilities, which is a document
12 you may or may not be familiar with, but is produced by
13 the debtor early in the case and shows what the debtor
14 holds in various assets and liabilities.

15 Q. Again, Mr. Young --

16 A. But I just point this out because there were
17 retainers being held pre-petition that could have been
18 reflected here in the January 18 column but they are
19 not. Again, because we were trying to report
20 consistently with the schedule assets and liabilities.
21 But these -- the nature of this line item is retainers
22 held -- retainers which had been paid to restructuring
23 professionals, some pre-petition, some post-petition.

24 Q. Does this accounting treatment of pre-paid
25 restructuring costs provide any value that the Indenture

1 Trustee can realize by reason of its lien? It doesn't,
2 does it?

3 MR. JONES: I'm going to object that that
4 calls for a legal conclusion. I don't think the witness
5 knows what the Indenture Trustee can or can't foreclose
6 on.

7 MR. SHIELDS: Your Honor, probably the
8 financial people are better equipped than the lawyers to
9 answer.

10 THE COURT: I'll let him answer. But
11 bankruptcy, of course, is a creditor's remedy.

12 MR. SHIELDS: Well, it's not in --

13 THE COURT: It may not be your favorite.

14 MR. SHIELDS: Well, we had a lien on the
15 cash, we don't think we have a lien on this, do we?

16 A. I'll answer with I don't know.

17 Q. Okay. And in the other category, what
18 comprises the other category of \$702,000?

19 A. Other.

20 Q. I know, but give me some examples of what's in
21 it.

22 A. I believe that these are other types of
23 capitalized costs. I don't -- I don't specifically know
24 the nature of those. It's a fairly small item. If I
25 had my records in front of me, I could look that up, but

1 I don't know sitting here today.

2 Q. Okay. With respect to the \$2.7 million timber
3 note that's referred to in your footnote and is part of
4 the total of investments, you're carrying the amount of
5 that timber note on this balance sheet at par value,
6 aren't you?

7 A. Yes.

8 Q. Okay. And you're aware, though, that those
9 timber notes do not trade at par value, do they?

10 A. I'm aware of that.

11 Q. By the way, to the extent that the prepaid
12 restructuring retainers are being held for
13 professionals, under the bankruptcy code, if things
14 follow normal course, those attorneys will be paid
15 before even a secured creditor such as the Indenture
16 Trustee, correct?

17 MR. JONES: Your Honor, objection. That
18 is a legal question and we've had occasion to --

19 THE COURT: If he knows. Do you know the
20 answer to that?

21 THE WITNESS: I believe the answer to
22 that is yes.

23 MR. SHIELDS: I'll pass the witness.

24 Thank you.

25 THE COURT: All right. Are we going to

1 redirect him now or what -- I mean, direct him now or
2 what are you going to do?

3 MR. NEIER: He's not my witness.

4 THE COURT: They called him on cross.

5 MR. NEIER: It's Mr. Shields' witness.

6 MR. SHIELDS: I, of course, called him as
7 an adverse witness.

8 THE COURT: Who provided the proffer?

9 MR. FROMME: Scopac provided the proffer
10 of Mr. Young. I'm happy to proceed however the parties
11 want to proceed.

12 MR. SHIELDS: I do -- one last point.

13 THE COURT: Okay.

14 MR. SHIELDS: If it's not already in
15 evidence, I would like to offer Exhibits C and D.

16 THE COURT: I really don't want to do
17 this part-time stuff. I would prefer that everybody
18 decide what exhibits they want in and let's deal with
19 that first thing in the morning. All of the exhibits.

20 MR. NEIER: That's fine. This is a
21 little different because I just got advised that Scopac
22 did not prepare an exhibit list, so what we're going to
23 do is we're going to ask for the admission of
24 Mr. Young's proffer and all its exhibits and we're going
25 to list it as a Marathon exhibit.

1 THE COURT: Do you have any objection to
2 that?

3 MR. FROMME: No, Your Honor, I don't. I
4 think --

5 THE COURT: Okay. Then that's in,
6 regardless of that fact.

7 MR. NEIER: We're going to update your
8 binders to include it.

9 THE COURT: The Court's official record
10 of what's in -- we can go through and find out what I
11 admitted by listening to the transcript but I would
12 prefer to make certain that we all go through all the
13 exhibits first thing in the morning.

14 MR. FROMME: Of course, Your Honor. And
15 the one thing I'd ask is that we authenticate
16 Mr. Young's declaration.

17 MR. NEIER: I'm going to do that right
18 now. And for the record, this will become in your
19 binder as part of the record MMX Exhibit 92, which is a
20 reserved number.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. NEIER:

24 Q. Good afternoon, Mr. Young. David Neier on
25 behalf of Marathon.

1 THE COURT: You know, it might be a good
2 idea since I've been going since 2:00. Let's take a
3 break now. My plan is to go to 8:00 tonight if
4 everybody can handle that. All right. And start at
5 8:30 tomorrow.

6 THE CLERK: All rise.

7 (A recess was taken.)

8 THE BAILIFF: All rise.

9 THE COURT: Be seated. Let's see. We
10 have a witness on the stand.

11 MR. NEIER: He's not on the stand yet,
12 Your Honor. We're looking.

13 THE COURT: We're going to find him.

14 MR. NEIER: I think a bench warrant is in
15 order.

16 THE COURT: Go put him in irons. All
17 right. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. NEIER:

20 Q. David Neier on behalf of Marathon. Mr. Young,
21 I think before we start crossing you, I think it would
22 be good to get your direct in. So I'm going to ask the
23 questions that Mr. Fromme suggested I ask you. Which
24 is, you have a copy of your declaration up there which
25 has now been marked as MMX 92.

1 A. I do.

2 Q. And you signed this declaration?

3 A. With an electronic signature.

4 Q. Right. And it's true and correct as far as
5 you know?

6 A. Yes.

7 Q. Now we can go ahead and cross you on your
8 direct testimony. I believe you said that you prepared
9 the monthly operating report that's attached as Exhibit
10 C to MMX 92, your affidavit?

11 A. That's correct.

12 Q. And you've prepared monthly operating reports
13 in this case before, correct?

14 A. That's correct.

15 Q. And you have prepared other monthly operating
16 reports in your role at Xroads and for other companies
17 while they're in Chapter 11?

18 A. I have.

19 Q. And you're familiar with preparing reports
20 required for the bankruptcy process. You've done the
21 report not only for debtors but you've done it for
22 trustees?

23 A. That's correct.

24 Q. And you attached the May monthly operating
25 report to your declaration as Exhibit C?

1 A. I believe it's Exhibit C. It is attached.

2 Q. And that was prepared under your supervision?

3 A. That's correct.

4 Q. And you filed it on, I think, on Sunday, June
5 29, the day before we started this hearing?

6 A. It was over the weekend some time, yes.

7 Q. And if we can look at the first page, that's
8 your signature on the first page of the monthly
9 operating report as Exhibit C?

10 A. I'm ashamed to admit it, but it is.

11 Q. And you signed it under penalty of perjury
12 that you understood that this was true and correct,
13 correct?

14 A. That's correct.

15 Q. That was a lot of corrects. But you signed it
16 under penalty of perjury?

17 A. Yes.

18 Q. And you knew that this monthly operating
19 report was going to be the focus of some attention at
20 this hearing, correct?

21 A. I did.

22 Q. And so you worked to make sure that it would
23 be right, in your view?

24 A. Yes, yes.

25 Q. And if we can turn to page 2 of Exhibit C.

1 It's your view, correct, that the total assets or the
2 total current assets excluding the forest, just looking
3 at the working capital assets, it's \$54,750,000 as of
4 January 18 and as of the end of the month of May, it was
5 \$51,227,412, correct?

6 A. I'm struggling with an answer to that question
7 because the point I mentioned earlier where the January
8 18 numbers are per the schedule of assets and
9 liabilities which I did not prepare.

10 Q. Right. Right. But you're a certified public
11 accountant, correct?

12 A. I am.

13 Q. And you worked at Xroads and now you're, in
14 turn, chief financial officer of Scopac?

15 A. I am.

16 Q. And in the course of your work for the
17 debtors, you've tried to, shall we say, harmonize the
18 books and records of the company and make sure, to the
19 best of your ability, that the monthly operating reports
20 are true and correct?

21 A. I have.

22 Q. And there may be some errors or adjustments
23 you might make. For instance, I think you mentioned
24 that the retainers were probably paid prior to January
25 18th and they continue to this day, correct?

1 A. Yes.

2 Q. But you believe that the retainers that
3 professionals are holding, that is, the \$514,671, that
4 is an asset of the company, correct?

5 A. Yes.

6 Q. It will be used to offset professional
7 expenses in this case, presumably?

8 A. That's correct.

9 Q. Now, when this case began, you counted as part
10 of your cash, cash equivalents such as the timber notes,
11 correct?

12 A. Correct.

13 Q. And you've now determined to put them
14 separately in the investments category which was, I
15 think, a zero at the beginning of the case and is now
16 \$26.7 million?

17 A. That's correct.

18 Q. And that's made up of approximately \$2.7
19 million of the timber notes and the auction rate
20 securities?

21 A. Yes.

22 Q. And Mr. Shields asked you whether or not we
23 should really be counting the timber notes at par, but
24 of course, they weren't par at the petition date,
25 correct?

1 A. I don't know how those were included in cash
2 at the petition date.

3 Q. Okay. Fair enough. And --

4 A. I'm sorry, did you say the A-1 timber notes or
5 the auction rate securities?

6 Q. The timber notes is what we were talking
7 about.

8 A. I'm sorry, the timber notes were recorded at
9 par as of the petition date.

10 Q. Right, but they were at par as of the petition
11 date and they're not at par now?

12 A. That's correct.

13 THE COURT: You mean they weren't selling
14 at par.

15 MR. NEIER: Trading at par, that's
16 correct.

17 THE COURT: They weren't trading at par,
18 they were booked at par both times.

19 MR. NEIER: Right.

20 Q. (By Mr. Neier) Is that correct? That's your
21 understanding?

22 A. That's correct. We receive a statement from
23 the Bank of New York which shows those holdings, and on
24 that statement it is presented as \$2.7 million.

25 Q. The face amount?

1 A. Yes.

2 Q. If you will. Now, let's just go through the
3 lines. You know, we've talked about cash, the cash has
4 gone from \$46 to \$5 million, and in part, that's because
5 some of the cash was moved to this new column, the
6 investments, correct?

7 A. That's correct.

8 Q. All right. Now, accounts receivable, I think
9 you testified that the bulk of this is a receivable that
10 is owed by Palco to Scopac, correct?

11 A. Correct.

12 Q. And in your view, does that receivable have to
13 be paid as part of the confirmation of this case? Does
14 it have to be an accounting of that?

15 A. Yes.

16 Q. And you mentioned the class 6 adjustment or
17 the class 6 adjustment in the plan of reorganization
18 that's on file with this Court?

19 A. Correct.

20 Q. And you've read that and you didn't have a
21 copy so you could study it, but you recall that that
22 might give you some idea as to the value of those
23 receivables, assuming the plan is confirmed?

24 A. Yes.

25 Q. Okay. I can show you a copy of the plan

1 that's on file. And I think what you're referring to is
2 the last three lines that begin with "minus C." But you
3 take a look.

4 A. Would you like for me to read this?

5 Q. You just have to refresh your recollection. I
6 don't think you have to read it out loud. If you want
7 to, it's an awfully long section.

8 A. (Witness complies.) Okay.

9 Q. Is it your understanding that -- and does this
10 refresh your recollection as to what you were testifying
11 about when Mr. Shields was asking you questions?

12 A. It does.

13 Q. And is it your understanding that there will
14 be an upward adjustment of all the amounts that Palco
15 owes Scopac upon confirmation? There will be an upward
16 adjustment in the class 6 distribution to the
17 Noteholders based on the amounts Palco owes Scopac
18 post-petition, net of any amounts that Scopac owes
19 Palco?

20 A. Yes.

21 Q. And in fact, as part of these receivables are
22 concerned, you're aware, are you not, that Marathon has
23 actually given a carveout of its security interest in
24 its collateral at Palco to Scopac to assure or to give
25 adequate assurance of future payments to Scopac,

1 correct?

2 A. That's partially correct.

3 Q. What's your understanding?

4 A. Well, they have done so for --

5 Q. The market? I'm sorry. Go ahead.

6 A. They have done so for the log sales for the
7 month of June that would be paid in July.

8 Q. And recently going forward?

9 A. I'm not sure if that's finalized yet, but
10 there, as I understand, is another carveout for the July
11 log sales that would be paid in August.

12 Q. Okay. I believe the Court signed an order
13 that Mr. McDowell requested that it sign before 2 p.m.
14 confirming that there would be a similar deal for the
15 next log payment.

16 A. Very good.

17 Q. So whatever the value of the receivables are,
18 would you say that the fact that Marathon is giving a
19 carveout to protect Scopac's interest in those
20 receivables and the fact that they have to be paid under
21 the class 6 adjustment, an upward adjustment, if you
22 will, to the Noteholders, that that would be factored
23 into the value of those receivables, correct?

24 A. I think that's a fair statement.

25 Q. It's not just the age of the receivables that

1 you look at?

2 A. That's correct.

3 Q. And you haven't performed any valuation of the
4 receivables; is that right?

5 A. That's correct.

6 Q. And the best -- to the best of your
7 recollection, it's what you put in the monthly operating
8 report. That is, the amount of the receivable as an
9 asset of a company?

10 A. Correct.

11 Q. Now, on -- in a general sense, is it typical
12 for companies to take their cash and during their
13 operations turn them into working capital? Is that
14 something that fairly happens in most -- in most
15 situations?

16 A. Yes.

17 Q. Cash becomes inventory, correct?

18 A. Correct.

19 Q. Cash becomes other assets, correct?

20 A. Yes.

21 Q. Cash becomes receivables, it becomes -- and it
22 becomes prepaid expenses such as retainers, correct?

23 A. Yes.

24 Q. And it can be invested as well, and that
25 becomes an asset of a company?

1 A. Yes.

2 Q. So those are all forms of working capital just
3 like cash, except they may have a different valuation
4 than cash, correct?

5 A. That's correct.

6 Q. Okay. And with respect -- I don't want to
7 blind Mr. Krumholz with my laser, although it's
8 tempting.

9 THE COURT: Of course, Mr. Greendyke is
10 in the bad spot.

11 MR. NEIER: No, Judge, I'll be very
12 careful with Mr. Greendyke. There's after all, the
13 Greendyke doctrine and I don't want to mess it up.

14 Q. (By Mr. Neier) Now, with respect to the
15 inventory, you've got this note over here, it says
16 "lower of cost or market." Do you see that, this is all
17 on Exhibit C, the second page.

18 A. I do.

19 Q. And what does that mean?

20 A. That means that we present inventory -- and I
21 hate to just read what it says, but it means that we
22 present inventory on a basis that will reflect either
23 the lower of cost or what we think market value might
24 be. But in this case, it's going to be cost.

25 Q. Okay. And the cost is by far the lowest way

1 to value the inventory, correct?

2 A. Yes.

3 Q. You could also value the inventory -- this is
4 the log deck you spoke of that's at Scopac, correct?

5 A. Correct.

6 Q. And there was no log deck on the petition
7 date, now there's a log deck, it's put on -- it's put in
8 here at \$514,671 but that's based on costs, correct?

9 A. Actually, wrong row. I hate to be picky. The
10 \$526,000.

11 Q. \$526,000?

12 A. That is correct. That is reflective of costs.

13 Q. Okay. And in fact, you would expect to sell
14 that log deck inventory for a great deal more to Palco?

15 A. Yes.

16 Q. And that's under the new master purchase
17 agreement that's in existence between Palco and Scopac,
18 correct?

19 A. Correct.

20 Q. And in fact, you expect that going forward, at
21 least through as of today, the log deck inventory at
22 Scopac is going to generate some \$3.3 million of revenue
23 for Scopac excluding any reimbursement for log and haul
24 costs, correct?

25 A. Correct.

1 Q. Okay. So whatever it is, you would agree with
2 me that it's more than \$526,000 if you had to value it,
3 but you're just putting it at that thing -- at the lower
4 cost to market, correct?

5 A. That's correct.

6 Q. So when you look at this table, there really
7 are things that you adjust upward and adjust downward so
8 you have, you know, for instance, you have the
9 investments. You have receivables. And you have
10 inventory. All of those things, really if you had to do
11 a valuation, they might be different numbers, but this
12 is the way the company properly accounts for them as far
13 as you're concerned, correct?

14 A. Correct.

15 Q. What about the next line after inventory,
16 prepaid expenses. I believe you said those are -- those
17 are prepaid expenses concerning the timber harvest
18 plans; is that right?

19 A. Yes.

20 Q. What do you understand that to be?

21 A. Those are costs that have been incurred to,
22 for lack of a better way of articulating it, secure our
23 abilities to harvest in certain areas. And they're
24 costs that are incurred in advance of harvesting.

25 Q. So if I -- if I can understand what you're

1 saying, you've prepaid certain expenses that allow you
2 to conduct your commercial timberland operations at
3 Scopac?

4 A. Correct.

5 Q. And so you would view that as you have it
6 listed here as an asset of the company?

7 A. Yes.

8 Q. So I think we already talked about the
9 retainers. Let's talk about the investments which used
10 to be part of the cash and now are reflected down here
11 in the investments column. We talked about the timber
12 notes, that they're booked at face value. They trade at
13 a different value, they traded at a different value as
14 of petition date, they trade at a different value as of
15 the end of May. Let's talk about the auction rate
16 securities.

17 What is your understanding as to when the
18 auction rate securities were acquired by Scopac?

19 A. When they were originally acquired?

20 Q. The ones that exist today. You know what,
21 let's take a step back. You have your declaration in
22 front of you, correct?

23 A. I do.

24 Q. Can you go to Exhibit A of your declaration.
25 Put up Exhibit A. Can you tell me what is reflected

1 here on Exhibit A.

2 A. These are the holdings in the SAR account as
3 of June 27, 2008.

4 Q. And first we have the timber notes at the book
5 value, correct?

6 A. Correct.

7 Q. And then we have -- these are the auction rate
8 securities. This is the PHEAA series that you mentioned
9 earlier and these are the other series? The other
10 auction rate securities? I apologize.

11 A. Correct.

12 Q. And then you have U.S. treasuries, \$1.895
13 million?

14 A. Correct.

15 Q. And there's no doubt that the U.S. treasuries
16 are going to be paid at par, correct?

17 A. I hope not.

18 Q. I hope not, too. With respect to the auction
19 rate securities, is it a fact that you understand them
20 to have been acquired in March of 2007, correct?

21 A. That's not correct.

22 Q. What is your understanding?

23 A. I don't know specifically when they were
24 originally acquired.

25 Q. Were they acquired after you were retained?

1 A. I don't know.

2 Q. Well, do you recall giving a deposition in
3 this case?

4 A. I do, and I'm prepared for your question.

5 Q. I'm glad you're prepared for my question.
6 Maybe I don't have to flash it up on the screen then.

7 But --

8 A. Please do.

9 Q. Mr. Penn, if you could turn to page 62, line
10 19 of his deposition. Do you wish a copy?

11 A. Yes, please. A complete copy if I may.

12 Q. A complete copy?

13 MR. FROMME: The witness has a copy with
14 him.

15 THE WITNESS: Do I? I do.

16 Q. (By Mr. Neier) If you go to line 19.

17 A. Page?

18 Q. 62. I apologize. Are you there?

19 A. Yes, I'm there.

20 Q. Okay. So I asked you the question: "Were you
21 an advisor -- let's take a step back. I believe you
22 stated you began performing services for the debtors in
23 March of 2007." Answer: "I believe that's correct."
24 "Was the investment in auction rate securities made
25 before or after you were retained?" Answer: "That

1 would have been made after."

2 A. Mr. Neier, I interpreted --

3 Q. Let me ask my question.

4 A. Sure.

5 Q. Which is: Did I ask you those questions and
6 did you give those answers?

7 A. That's correct.

8 Q. Okay. And do you wish to change your
9 testimony to your deposition or clarify your answer?

10 A. I think I'd like to clarify. When I heard
11 this question, I focused on the investment and auction
12 rate securities, which I understood as what we might
13 call the rollover investment or the -- when those
14 auctions were most recently renewed and I knew that that
15 occurred subsequent to my being retained. What I don't
16 know is the original date which the SAR account was
17 investing in auction rate securities.

18 Q. I just want to clarify the record when I said
19 "bless you," I was not blessing the witness. And I say
20 that because there was a deposition of Mr. Dean where
21 Mr. Dean was testifying about how MRC had donated land
22 to a state park and at that moment Mr. Brilliant sneezed
23 and I said, "bless you," so the transcript reads that
24 Mr. Dean donated land to a state park and I said "bless
25 you."

1 So getting back to your deposition. Is
2 it your understanding that the auction rate securities
3 were a "eligible investment" under the indenture between
4 the Noteholders and Scopac?

5 A. That is my understanding.

6 Q. And so there may have been other investments
7 in the auction rate securities as of the petition date,
8 but they rolled over and there were new investments made
9 some time after you were retained in March of 2007; is
10 that a fair way of putting it?

11 A. That's fair.

12 Q. And who made the determination. To the best
13 of your knowledge. To purchase the auction rate
14 securities?

15 A. I don't know.

16 Q. You have your deposition in front of you. I'm
17 going to ask you to look at page 62 just a little bit
18 after this question. And then page 63, I asked you:

19 "And who made the determination to purchase the auction
20 rate securities, I said to the best of your knowledge?"

21 Answer: "That would have been Maxxam manages the
22 day-to-day. What I call typically treasury management
23 functions of the SAR account, and so I don't know when
24 they began investing in auction rate securities but it
25 would have been Maxxam who, you know, they may or may

1 not have conferred with the Back of New York that made
2 that decision."

3 MR. SHIELDS: I'm sorry, Mr. Neier.
4 Excuse me for the interruption. We were reserving
5 objections during the deposition, but the portion of the
6 answer that is starting at line 6 through 9 is
7 speculative, nonresponsive. It is not based on personal
8 knowledge and I object to it being admitted under the
9 guise of a proper answer given at the time.

10 MR. NEIER: I'm asking his understanding
11 as to who made the investment decisions of the SAR
12 account.

13 THE COURT: If he has one, he can say.
14 If he doesn't, he can't say.

15 Q. (By Mr. Neier) Well, I'm going to ask my
16 first question. Did you give those questions -- did I
17 ask those questions, did you give those answers?

18 A. That's correct.

19 Q. Okay. Now, do you wish to either change your
20 testimony or clarify what you stated at that time?

21 A. No, I will clarify. What I -- what I do know
22 is that there are communications between Maxxam and the
23 Bank of New York and that there have been communications
24 between Maxxam and Bank of New York with respect to
25 investing in auction rate securities.

1 Q. Okay. Let me see if I can -- if I can clarify
2 your answer a little bit further. You don't make any
3 decisions to invest estate assets in auction rate
4 securities, correct?

5 A. That's correct.

6 Q. And as far as you know, no one at Scopac makes
7 the determination to invest in auction rate securities,
8 correct?

9 A. That's correct.

10 Q. And as far as you understand, there are
11 management services performed for Scopac by Maxxam,
12 correct?

13 A. That's correct.

14 Q. And as far as you understand, some of those
15 management -- some of those management services that are
16 provided by Maxxam include dealing with investments of
17 the SAR account?

18 A. That's correct.

19 Q. You're not sure who made the decision to
20 invest in particular auction rate securities or these
21 auction rate securities that are listed in Exhibit A to
22 your proffer, you just know that the investments exist,
23 correct?

24 A. That's correct.

25 Q. And they weren't made by anybody at Scopac,

1 correct?

2 A. Correct.

3 Q. Okay. And you mentioned a Delona Moore before
4 when Mr. Shields was asking you questions, and who is
5 she?

6 A. She is an employee of Maxxam.

7 Q. And what do you understand her role to be?

8 A. My interactions with Delona Moore of Maxxam
9 generally involve treasury matters. I do not know what
10 her title is.

11 Q. By "treasury matters," what do you mean?

12 A. If I need information regarding historical
13 spending from the SAR account, I would go to her.
14 Really any questions I have about historical
15 disbursements from the SAR account, she would be the one
16 who I would contact. Or if we need funds transferred
17 from the SAR account to the operating account, a person
18 who reports to me would contact her and have those funds
19 transferred.

20 Q. To the -- to the estate?

21 A. Yes. Well, to the operating account. I
22 consider them both to be part of the estate.

23 Q. Okay. Fair enough. Now, I believe you stated
24 that an analyst under your direction spent a week trying
25 to sell -- or not sell, that's a wrong word. To

1 determine whether the auction rate securities could be
2 sold, correct?

3 A. Correct.

4 Q. And you're not an expert on auction rate
5 securities, I take it?

6 A. I am not.

7 Q. Okay. And were you present when Mr. Radecki
8 testified?

9 A. I was.

10 Q. Mr. Radecki testified that there was
11 essentially a frozen market. That's the word he used, a
12 frozen market for auction rate securities. Would that
13 accord with your understanding as well?

14 A. There is a frozen primary market for auction
15 rate securities.

16 Q. A helpful clarification. And this analyst
17 that works, I presume an employee of Xroads is what you
18 said?

19 A. That's correct.

20 Q. He's not an expert in auction rate securities?

21 A. No, he's not.

22 Q. And the estate didn't retain a broker to try
23 and market these auction rate securities for the highest
24 and best value; is that correct?

25 A. That's correct.

1 Q. And do you think, based on what -- the work of
2 your analyst, that there will be a better price, if you
3 will, or a better ability to market the auction rate
4 securities or even just the ability to sell them if the
5 market were -- if the primary market were to become
6 unfroze?

7 A. Yes.

8 Q. And that could happen, correct?

9 A. It could.

10 Q. It's not a permanently frozen market. It's
11 week to week, correct?

12 A. Correct.

13 Q. And I believe you stated that in addition to
14 hearing from your analyst about sales of auction rate
15 securities, you also heard from Delona Moore; is that
16 right?

17 A. That's correct.

18 Q. And what did she tell you?

19 MR. SHIELDS: Excuse me, Your Honor, I'm
20 going to object to that as hearsay.

21 MR. NEIER: He's the CFO. This is
22 somebody who provides him information on this account.
23 He got information from his analyst. He's the CFO, he's
24 got to rely on other people to tell him about the
25 assets.

1 THE COURT: Are you asking him for the
2 truth of what she said?

3 MR. NEIER: No, I'm asking what he heard
4 from her about marketing the auction rate securities.

5 MR. SHIELDS: I guess that would be the
6 truth when we hear it.

7 MR. NEIER: I actually don't know what
8 was said so I'm just asking what was said.

9 MR. SHIELDS: Frank hearsay, Your Honor.

10 THE COURT: Sustained. Move on.

11 Q. (By Mr. Neier) Well, you stated that you
12 receive communications from Ms. Moore and communications
13 in the form presumably both spoken and written such as
14 e-mail; is that correct?

15 A. That's correct.

16 Q. And in the regular course of your business,
17 you consult with Ms. Moore on, I think what you said was
18 historical spending information, correct?

19 A. Correct.

20 Q. And in the regular course of your employment
21 as the chief financial officer for Scopac, do you
22 receive documents and communications from people like
23 Ms. Moore?

24 A. I do.

25 Q. And in the regular course of your employment,

1 do you maintain the records that you would receive from
2 somebody like Ms. Moore at Maxxam, the parent company?

3 A. I do.

4 MR. SHIELDS: Excuse me for a moment,
5 Your Honor. I'm going to object to them putting up an
6 e-mail that they haven't offered into evidence yet and
7 is hearsay, neither authored by him, received by him and
8 contains a hearsay statement from Delona Long who they
9 chose not to subpoena and bring here, a Maxxam employee,
10 and they're trying to get it into evidence by flipping
11 it up on the screen.

12 MR. NEIER: I asked him the proper
13 foundation to receive it and we haven't even looked at
14 the communication yet or shown it to the witness.

15 MR. SHIELDS: I'll be happy to take the
16 witness on voir dire.

17 MR. NEIER: Excuse me, excuse me, I
18 haven't finished my question.

19 THE COURT: Hold it. Hold it. Okay.
20 You get to talk to me and you get to talk to me. Lay
21 the proper foundation and then if you want to take him
22 on voir dire after that's laid, go ahead.

23 MR. SHIELDS: I can do that.

24 THE COURT: Go ahead. This will be just
25 like a real trial. I mean, if you can get him to

1 identify the document as an ordinary business document,
2 kept in the ordinary course and not in anticipation of
3 trial, contemporaneous with the time he received it. If
4 all that can be done, then I guess that's an exception
5 to the hearsay.

6 MR. SHIELDS: That is not.

7 THE COURT: Well, fine. We'll do this in
8 the normal course --

9 MR. NEIER: Please.

10 THE COURT: Let him testify, not you two.

11 MR. NEIER: That's a good idea. Your
12 Honor, just for the record, this has been marked, I
13 think, twice. I guess actually Scopac did not submit an
14 exhibit list but they have produced it and it's been
15 marked as MMX 210 but I have a separate copy so we don't
16 have to flip through all the binders for one page.

17 THE COURT: Okay. Show it to him.

18 MR. NEIER: May I approach?

19 THE COURT: Sure. Do you have copies?

20 MR. SHIELDS: I have got so much written
21 on mine that I need a copy.

22 THE COURT: Without admitting it, I'll
23 take a copy also. It's not admitted, I won't consider
24 it.

25 Q. (By Mr. Neier) Now, Mr. Young, I'm showing

1 you what's been marked as MMX 210. I'd you to take a
2 look at it and see if you recognize it.

3 A. I do.

4 Q. And what do you recognize it to be?

5 A. An e-mail that I was sent by Delona Moore, a
6 copy of an e-mail that was provided with by Delona Moore
7 when I had asked her -- after I found out the SAR funds
8 had become illiquid. As I began to do due diligence of
9 what happened, I was provided with this e-mail.

10 Q. And you were provided by this e-mail by whom?

11 A. By Delona Moore.

12 MR. NEIER: Okay. And you know, I think
13 I've laid the proper foundation so I would ask to move
14 for the admission of this document. He received the
15 communications, he received this e-mail.

16 THE COURT: You can ask your questions.

17 MR. SHIELDS: Thank you, Your Honor.

18 MR. NEIER: I'm sorry, I have one more
19 question.

20 Q. (By Mr. Neier) You testified in your
21 deposition about receiving this e-mail, correct?

22 A. I don't think I testified with certainty. I
23 knew that I had -- that something had been communicated
24 to me. I had forgotten if it was an e-mail. At the
25 time I wasn't able to recall if it was just a discussion

1 I had had with Delona or if she actually provided me
2 with an e-mail. It took me -- I mean, I didn't get it
3 the first time I requested it and it took some time to
4 get the e-mail so I couldn't recall if I had actually
5 received it or not at the time.

6 MR. NEIER: We now move for admission.

7 THE COURT: Your witness.

8 VOIR DIRE EXAMINATION

9 BY MR. SHIELDS:

10 Q. What has been handed to you and marked as MMX
11 210 is an e-mail from Delona Moore to a M. Chisari at
12 bank -- it says "BANKofNY.com, re: Today's auction
13 1/9/2008," correct?

14 A. Correct.

15 Q. Okay. You were neither the author of this
16 document nor a recipient of it, correct?

17 A. That's correct.

18 Q. Okay. And it's, therefore, not something you
19 receive contemporaneously with its creation and kept as
20 part of the ordinary business records of Scopac,
21 correct?

22 A. That's correct.

23 Q. All right. And you don't -- do you know who
24 M. Chisari at Bank of New York is if that's what those
25 initials stand for, those letters?

1 A. No, I do not.

2 Q. Okay. And do you know whether this person is
3 an employee of Bank of New York in its capacity as
4 Indenture Trustee or in its capacity in some other
5 respect as perhaps a person that executes securities
6 transactions?

7 A. I do not know.

8 Q. And do you know -- were you involved in the
9 particular communication or subject matter of the
10 communication at the time it occurred?

11 A. No.

12 Q. Would you be doing anything other than
13 speculating as to what the intent of the author was and
14 the words that were used? I mean, we can all read a
15 document and speculate what it means. The point is, you
16 weren't involved in this particular subject matter such
17 that you have some special ability to interpret a
18 document that you neither authored nor received,
19 correct?

20 A. That's correct.

21 Q. All right. And the -- whether the statement
22 that is referred to in the document is true or untrue is
23 not something you know of of your own personal
24 knowledge, correct?

25 A. That's correct.

1 MR. SHIELDS: Your Honor, this not only
2 is not a business record of Scopac, and therefore, it
3 does not qualify under the business records exception to
4 the hearsay rule. Even if it did, the content of it,
5 which is only one sentence, would not be admissible
6 because itself it is hearsay as to a highly
7 controversial and important matter involving millions of
8 dollars. This is what the hearsay rule is all about.
9 It's hearsay within hearsay.

10 THE COURT: Where did you get this
11 document?

12 MR. NEIER: It was produced by Scopac,
13 Your Honor.

14 THE COURT: When was this produced?

15 MR. FROMME: This week, Your Honor, on
16 Monday.

17 MR. NEIER: Your Honor, this is not --

18 MR. SHIELDS: Can I finish one last
19 point. I'm almost through, Your Honor.

20 THE COURT: Okay.

21 MR. SHIELDS: The last thing which I
22 think is obvious in me identifying Delona Moore as a
23 treasury employee of Maxxam and M. Chisari as an
24 employee of -- it could be Bank of New York capital
25 markets, could be some Bank of New York entity that he

1 doesn't know, nor does he know this individual, it's
2 clearly not prepared by an employee of Scopac. He
3 didn't receive it at the time, he can't authenticate
4 that the information that's recorded therein was
5 recorded at or near the time that it occurred. It's
6 hearsay, not under the business records rule, doesn't
7 qualify. And the content of it is hearsay itself being
8 offered for the proof of the matter stated. It's
9 hearsay within hearsay.

10 MR. NEIER: Your Honor, now as
11 Mr. Shields finished his argument, I would like to make
12 mine, which is this is a classic business record. He's
13 the CFO of a company, he testified that in the regular
14 course of his performance of his duties he receives
15 documents and communications about the historical
16 investments.

17 THE COURT: Well, I think that in view of
18 the fact this document has been out here for at least
19 since Monday and that presumably which it's not like --
20 and we're going to be here for a couple more days. If
21 this is significant enough people, they can figure out
22 who these people are. It may or may not be a business
23 record, but I think it qualifies under -- that it
24 doesn't appear to be anything other than what it is.
25 And it says what it says. It turns out Mike Chisari is

1 not available -- I don't know who he is, I have no idea
2 who he is but if someone wants Delona Moore here to
3 question her, we'll get her here. If somebody wants him
4 here and you-all want to produce him, that's fine. I
5 think there are --

6 MR. SHIELDS: We certainly would like to
7 question Delona Moore.

8 THE COURT: So the point is that there is
9 room under the federal rules of evidence for me to admit
10 the document regardless because it does seem authentic.
11 And I'm not sure how important it is, quite honestly,
12 but you-all will know better than I. If there's more
13 that needs to be said about this, then let's make it as
14 big as you want to. I'm going to admit it.

15 MR. KRUMHOLZ: It's not a business
16 record, Your Honor.

17 THE COURT: I said it could qualify
18 perhaps as a business record, but it clearly will
19 qualify under the omnibus provision of the hearsay
20 exception rules in the federal rules. It's a document
21 that otherwise does seem to be probative of some, but --
22 and also seems to be authentic. Go ahead.

23 MR. JONES: Your Honor, I'm sorry, I'm
24 only doing this for the appeal, which there may be. I
25 want to make sure. I would have offered this document

1 and it's admissible under two different grounds that I
2 think the Court should address. The first one is this
3 document is self-authenticating. It's got a Bank of New
4 York.com address on it. Just in the old days if I put a
5 document up that has Bank of New York letterhead on it
6 or is addressed to Bank of New York, that's
7 self-authenticating so this document is authenticated.
8 The question of hearsay is simply the wrong question.
9 This is not hearsay, this is an operative document.

10 THE COURT: The Bank of New York,
11 contrary to their interest, perhaps --

12 MR. JONES: No, I'm stating it's a
13 direction just as -- Whitmore referred to them as verbal
14 acts. If I stand up at a wedding and say "I do,"
15 whether I meant it or not, I'm married. By the same
16 token, if Delona Moore sends a message to Bank of New
17 York saying "invest," whether she meant to say that or
18 not, she has given a direction and the federal rules say
19 that's not hearsay. Your Honor, I just want to get that
20 on the record for the appeal.

21 MR. NEIER: And Your Honor, when he says
22 "I do" and I was standing next to him, please, I know
23 you're a Judge, but really...

24 MR. SHIELDS: The problem with it being
25 self-authentic -- I know you have admitted it.

1 THE COURT: I know we're not in
2 California. This is a California case perhaps.

3 MR. SHIELDS: I do want the Court to know
4 even though you have admitted it, it's not admissible
5 under Mr. Jones' theory because the Bank of New York, we
6 don't know if that's the same entity as the Indenture
7 Trustee.

8 THE COURT: I have never seen -- and the
9 might be the case, a bankruptcy case that has been
10 overturned on appeal on an evidentiary issue. Perhaps
11 that will happen and maybe --

12 MR. SHIELDS: One last point. While you
13 have admitted it into evidence and you've offered us the
14 ability to depose Ms. Delona Moore, which we certainly
15 want to do, it speaks for itself. And we ask that --

16 THE COURT: He can testify what he did in
17 response to this. He can testify why he got it, I
18 think, but he can't testify what it means.

19 MR. NEIER: And I haven't asked him any
20 questions about what it means and I haven't asked any
21 questions regarding the weight that he accorded it.

22 THE COURT: Right. You know, the other
23 thing is -- I don't know because maybe we're on
24 California time or something, but usually when I say
25 we're going beyond 5 o'clock, that speeds things up.

1 That has not happened here. I would hope that you start
2 thinking about moving on and getting this trial done.

3 MR. NEIER: Your Honor, if I can just
4 parse through my notes very quickly and make sure I
5 covered everything I need to cover.

6 Can we go back to the monthly operating
7 report and go through the professional fees. I think
8 it's later on in the report.

9 Q. (By Mr. Neier) Now, Mr. Young, I believe
10 Mr. Shields asked you questions about this as well. As
11 of May 2008, this is your understanding of the
12 professional fees that have been paid to professionals
13 in the Scopac case, correct?

14 A. That is correct.

15 Q. And with respect to some of the payments that
16 are listed here, for instance, the payment to Fulbright
17 and Jaworski, which is line 13, this is Exhibit C, the
18 monthly operating report, this is line 13. Those
19 payments are as best as the company can record them with
20 respect to the professionals of the Noteholders,
21 correct? The professionals of the Indenture Trustee and
22 the other professionals in these cases.

23 A. I'm sorry, could you please repeat that.

24 Q. You know what, I'm going to withdraw that
25 question. It is very complicated, much too complicated.

1 A simple question: Some of these professional fees were
2 paid to professionals of the Indenture Trustee and some
3 were not, correct?

4 A. Correct.

5 Q. And as of May, the total was \$25,713,443,
6 correct?

7 A. Correct.

8 Q. And if we could turn to Exhibit D, as in dog,
9 the last exhibit of your proffer, if we can put that on
10 the screen. As of June 27th, that is, as of Friday,
11 this is -- Exhibit D to your proffer specifies your
12 understanding of the payments that have been made to
13 professionals as of that day, correct?

14 A. Correct.

15 Q. And you understand that a total of \$17
16 million -- whoa. Go back the other way. A total of
17 \$17,380,467 has been paid to the debtor professionals.
18 The committee has been paid \$598,000, the Indenture
19 Trustee has received a total of \$8,916,774. B of A has
20 received a total of \$1,665,662, correct?

21 A. Correct.

22 Q. And now, if we can turn to the Neier/Penn
23 spreadsheet, mostly Penn. If you were to compare the
24 payments that have been made that are listed in the May
25 monthly operating report to the Indenture Trustee

1 professionals, that would be this number, the
2 \$7,127,663. That's the correct number as you can look
3 at your monthly operating report, correct?

4 A. Correct.

5 Q. And according to Exhibit D, which you
6 prepared, correct, or you had prepared for you; is that
7 right?

8 A. Had prepared for me.

9 Q. And these are the Indenture Trustee fees
10 listed on Exhibit D to your declaration, correct?

11 A. Correct.

12 Q. And these are -- the difference is that a
13 total of \$1,789,111 was paid between the time that the
14 May monthly operating report covers and Friday, June 27,
15 2008, correct?

16 A. Correct.

17 Q. Okay. And can we put up Indenture Trustee
18 Exhibit 162. I don't know if you can blow that up a
19 little bit. Now, this was an exhibit that was just
20 recently added to the exhibit list by the Indenture
21 Trustee. Have you ever seen this before?

22 A. Just briefly, yes.

23 Q. Okay. Now, this was prepared -- or according
24 to the document, it was prepared by Houlihan Lokey,
25 correct? I think we moved all the way up to the right.

1 MR. CLEMENT: Objection, Your Honor. Now
2 they are trying to speak from a document that has not
3 been admitted into evidence.

4 THE COURT: Are you going to withdraw it?

5 MR. CLEMENT: Yeah, I'll withdraw it.

6 MR. NEIER: I'm still going to ask him
7 questions on it.

8 MR. CLEMENT: How can he talk from a
9 document that's not in evidence, not been authenticated?

10 MR. NEIER: I'm not authenticating the
11 document, I'm not admitting the document. I haven't
12 admitted the document. I have asked him to look at the
13 document.

14 MR. CLEMENT: It's not an admission, Your
15 Honor. This is just a document.

16 THE COURT: I have not -- even if it's
17 just a chart, I guess he can look at it.

18 MR. NEIER: Right.

19 THE COURT: I mean, it's not admitted.
20 This is why I usually like to have these things admitted
21 first in the case. Let's -- I don't have any idea
22 what -- I mean, I'm not sure what this.

23 Q. (By Mr. Neier) Have you confirmed that this
24 has a Houlihan Lokey mark on it somewhere?

25 A. No, I have not.

1 Q. I know we flashed it through the screen very
2 carefully but maybe in the upper right-hand corner?
3 Okay. We can go to the document. Now, so you see this
4 Bank of New York adjustments line? Do you see that? Do
5 you see that?

6 A. Yes.

7 Q. You've seen this document before, correct?

8 A. Again, just very, very briefly.

9 Q. Right. And you see in this document that
10 somebody has decided that the auction rate securities
11 should be valued at zero. If you can just move up a
12 little bit to the right, or move a little bit over so we
13 can see. Adjustment based on 0 CMV. Do you know what
14 CMV stands for?

15 A. I assume current market value.

16 Q. Current market value for auction rate
17 securities. Do you agree that the auction rate
18 securities are worth zero?

19 A. Well, I'm not an expert in valuation of
20 auction rate securities. I do not believe the value
21 would be zero.

22 Q. Right. And there's no accounting for the
23 treasury notes, correct? The treasury notes, the \$1.895
24 million of treasury notes that are also part of the
25 investments now? That has value, right, we hope? We

1 talked about it before?

2 A. That which is included in cash.

3 Q. Okay. I'm not sure you're right, but if you
4 look at Exhibit A of your declaration, maybe that will
5 refresh your recollection. U.S. treasuries daily, the
6 last line in Exhibit A.

7 A. Yes, that \$1.9 million is included in cash.

8 Q. Okay. So Exhibit A, just to clarify the
9 record, Exhibit A is investments and then the U.S.
10 treasuries; is that right?

11 A. Yes.

12 Q. Okay.

13 A. May I clarify this?

14 Q. Yes.

15 A. In 531, if you please go back to the other
16 document. You have -- this shows \$5,047,057 of cash at
17 5/31.

18 MR. GERBER: Your Honor, if the Court
19 please, could we just at least have this entered into
20 evidence then?

21 MR. NEIER: I haven't asked for it to be
22 in evidence.

23 MR. GERBER: If he's going to read from
24 it, if it's going to form the basis for some --

25 MR. NEIER: First he doesn't want it

1 admitted, he wants it withdrawn. Now he says he wants
2 it admitted. They can handle it. They did handle it.

3 MR. GERBER: If it's going to be read
4 into the record, let's admit it into evidence. I don't
5 know what -- for what purpose Mr. --

6 MR. NEIER: But this is my examination.
7 Mr. Gerber will have his own examination at some other
8 point.

9 THE COURT: Hold it. Here's the deal.
10 If this were going to be introduced, which it was listed
11 as an exhibit in your stuff, then he was assuming that
12 he would have to -- at some point he's got to take shots
13 at it if it's an important document in your information.
14 Now, you're telling us -- first you're telling us you
15 were going to withdraw it. If he was going to withdraw
16 it, I would have taken him up on it and let him withdraw
17 it, but now that he's talked about it you want to say,
18 okay, we're going to put it in then. So if you're going
19 to put it in, I mean, as somebody -- somebody made this
20 chart. I assume you've got a witness that says yes, we
21 made it and all of these are taken from stuff that's
22 other places so it's a proper kind of a document. And
23 because it's just a compilation of other things and some
24 information, I assume. Is that correct?

25 MR. GERBER: Your Honor, we submitted

1 this because we were possibly going to use it. Okay.
2 So we wanted to give them as much advance notice as
3 possible. Whether we decide to use it, they've
4 designated hundreds of documents that they're not going
5 to introduce into evidence, they're not even going to
6 talk about. That's fine. I don't have a problem with
7 that. But if they're going to talk about a document
8 like that, then they need to put it into evidence.

9 MR. NEIER: First --

10 MR. GERBER: How is the record -- how is
11 the record.

12 THE COURT: First, I don't think he has
13 to put it -- I think what he has to do -- if you've got
14 this chart you were going to use, you thought, he can
15 certainly ask this if, for instance, there is an
16 adjustment on it that somehow it appears that the Bank
17 of New York is going to adjust the auction rate
18 securities from \$24 million to zero, he can ask the
19 witness this question: Do you believe they're worth
20 zero?

21 MR. GERBER: How does the witness know
22 that that is what that means?

23 MR. NEIER: Mr. Gerber can redirect the
24 witness however he wishes. This is my examination.

25 MR. GERBER: My point is --

1 MR. NEIER: I'm actually saving time
2 here, Your Honor, because I don't want to have to recall
3 Mr. Young.

4 THE COURT: I understand. You are
5 correct. Normally we would not deal with this until
6 rebuttal. If you brought this up, then he would have to
7 call the witness up to give testimony about all of that.
8 And I don't want to -- I mean, we were trying to
9 facilitate in moving along, I thought.

10 MR. GERBER: Your Honor, if --

11 THE COURT: So you said we're just going
12 to withdraw it, I thought that was going to do away with
13 it and I think it probably should if they're going to
14 withdraw it because you're not going to offer it.

15 MR. NEIER: I can't tell what he's going
16 to do with it at this point. I don't want to anticipate
17 what he's going to do.

18 MR. GERBER: If the Court please, I know
19 we're trying to shorten things, but we still have to
20 have rules of evidence. He authenticate the document.
21 The document is not in evidence and he's questioning him
22 about it.

23 MR. NEIER: I'm asking his understanding
24 or his agreement of these things.

25 MR. GERBER: Of a document that's not in

1 evidence.

2 MR. NEIER: That's right.

3 THE COURT: Look, this is not a difficult
4 document to understand what it says. I mean, we're not
5 talking about -- this is not a mystical document. I
6 mean, we can see cash investments, we can see what they
7 are.

8 MR. GERBER: That's fine, Your Honor, but
9 it needs to come into evidence so the witness can
10 testify as to it.

11 MR. KRUMHOLZ: Just to clarify, if the
12 witness is going to read from a document, the whole
13 context of the document ought to be into evidence.
14 That's basic evidence, is that true? If he doesn't want
15 to -- hold it. If he wants to -- we were going to
16 withdraw it before he started bringing it up.

17 MR. NEIER: These are multiple people
18 making every excuse in the book.

19 THE COURT: You can't make two comments
20 at the same time.

21 MR. KRUMHOLZ: If it's going to come
22 in in part it's not --

23 MR. NEIER: Well, it's not coming in at
24 all.

25 MR. KRUMHOLZ: No, it has. He has

1 testified -- he's reading from it, Your Honor.

2 MR. NEIER: Your Honor, I'm going to ask
3 him questions --

4 MR. GERBER: If he's not reading from the
5 document, then he's presenting evidence --

6 THE COURT: Are you going to use the
7 document or not? If you're not going to use the
8 document, then let's just move on.

9 MR. GERBER: No, we're not going to use
10 that document.

11 THE COURT: All right. Let's move on.
12 They're not going to use the document. You can still
13 ask him a question.

14 MR. NEIER: I'm still going to ask him
15 questions.

16 THE COURT: But not with the document.
17 Take the document off.

18 MR. NEIER: Not with the document but I'm
19 going to ask questions off Mr. Penn's computer because I
20 don't have a hard copy. 162 IT. Thank you. I have a
21 copy.

22 Q. (By Mr. Neier) Mr. Young, do you agree or
23 disagree that you should simply take an adjustment
24 downwards on the accounts receivable of a company in the
25 amount of \$6.2 million simply because they're over 91

1 days old?

2 A. I can't answer that question.

3 Q. Why not?

4 A. I haven't done any valuation of the accounts
5 receivable and I don't know the answer to that.

6 Q. Well, I'm asking you a simple -- I'm asking
7 you a different question. You already testified that
8 you didn't do any valuation of the accounts receivable,
9 correct?

10 A. Correct.

11 Q. And you already testified that the fact that
12 Marathon for some of the receivables offered a carveout
13 from its collateral would be a factor that you would
14 consider if you had to value the receivables of the
15 company, correct?

16 A. Correct.

17 Q. And we've already had some testimony, the fact
18 that there's an upward adjustment in 100 cent dollars
19 under the MRC/Marathon plan with respect to amounts --
20 the net amounts that Palco owes Scopac, that would also
21 be have to be factored into the valuation of the
22 receivables, correct?

23 A. Yes.

24 Q. Now I'm asking you simply because of the age
25 of the receivable that \$6.2 million is alleged to be

1 over 91 days old, would you exclude all the other
2 factors that you've already said you would consider in
3 valuation and just eliminate \$6.2 million based on the
4 simple fact that it was 91 days old? Would you do that?

5 A. I need to say that not all of those factors
6 apply to that \$6 million. For instance, the carveout
7 does not apply to that \$6 million.

8 Q. But would you eliminate it just on that basis?
9 That's what I'm asking.

10 MR. SHIELDS: Your Honor, I object to the
11 question as vague. I don't understand eliminate from
12 what. I would like to make certain the witness
13 understands.

14 Q. (By Mr. Neier) Would you take a downward
15 adjustment in the valuation of these receivables simply
16 because they are over 91 days old? Or would you
17 consider other things, whatever those other things are,
18 in determining the value of the receivables?

19 A. I would consider other things.

20 Q. That's it. And we talked about the retainers
21 before, the pre-petition retainers, the \$514,671 of
22 retainers that are listed as an asset of the company,
23 correct?

24 A. Correct.

25 Q. And you said that was an asset of the company?

1 A. Correct.

2 Q. And it's cash paid to professionals and there
3 will be an offset against what is owed those
4 professionals as an administrative claim, correct?

5 A. Correct.

6 Q. And so would you agree that you should wipe
7 out from the monthly operating report any value accorded
8 to those pre-petition retainers that have been paid to
9 professionals already?

10 A. No.

11 Q. All right. And you have -- can we go back to
12 the monthly operating report. Page 2. You have this
13 line that we didn't talk about before, which is called
14 other, which did not exist on January 18th, 2007, but is
15 now \$702,093 according to the monthly operating report,
16 which is Exhibit C to your proffer, page 2 under this
17 line other. Do you see that?

18 A. I do.

19 Q. And what is other?

20 A. I stand by what I said before. I don't know
21 specifically what's in that line item. It's a small
22 relative the total and I'd have to consult my records.

23 Q. Okay. Do you believe there should be an
24 adjustment of that amount to zero simply because it
25 didn't exist as of petition date, it's now listed at

1 \$702,093, it should simply be wiped out, not considered
2 as part of the assets of Scopac?

3 A. Without knowing what's in that account, I
4 can't answer your question. I'm sorry.

5 Q. Okay.

6 THE COURT: Did you put something on the
7 monthly operating report that you knew did not have any
8 value listed under assets?

9 THE WITNESS: No, sir.

10 THE COURT: Okay. Go ahead.

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

13 THE COURT: All right. Bank of America.

14 MR. JONES: Thank you, Your Honor.

15 MR. KRUMHOLZ: Your Honor, I'm sorry, we
16 had a problem hearing that last Q and A between you and
17 the witness. Do you mind if we just hear it?

18 THE COURT: I asked him if he would put
19 anything on the monthly operating report as an asset
20 that he knew to have no value. And he said no.

21 MR. KRUMHOLZ: Thank you.

22 CROSS-EXAMINATION

23 BY MR. JONES:

24 Q. Good afternoon, Mr. Young. Evan Jones on
25 behalf of Bank of America. Mr. Young, it may be

1 overkill but I want to go back to a very early portion
2 of your discussion with Mr. Neier because of the fact
3 that humor doesn't come out well on transcripts.

4 Mr. Neier asked you to identify operating report and
5 asked you if it was your signature and you said you were
6 ashamed to admit that it was. Is that because of the
7 penmanship there?

8 A. I have poor penmanship, yes.

9 Q. It had nothing to do with the contents of the
10 document?

11 A. No.

12 Q. I just want too to make sure because if we get
13 up on appeal, no one sitting here today would do it, but
14 some associate would write that up as you admitted that
15 you were ashamed of the document.

16 A. Thank you for pointing that out.

17 Q. Mr. Young, you've indicated that -- and
18 actually, this is very helpful. Whoever has control
19 could leave this up. You've indicated here that in the
20 month of April 2008 it was determined that the auction
21 rate securities were not liquid. Do you know when they
22 became illiquid? Was that -- was that at the same time
23 or did that occur some time prior to that April date
24 when this determination was made?

25 A. I don't have firsthand knowledge of that.

1 Q. Do you know if it was during the calendar year
2 of 2008 that they became illiquid?

3 A. I don't have firsthand knowledge of that.

4 Q. You've also indicated earlier that you don't
5 know when the SAR account was first invested in auction
6 rate securities; is that correct?

7 A. That's correct.

8 Q. Bank of New York would know that, wouldn't
9 they?

10 A. They would.

11 Q. They have custody of the SAR account?

12 A. They do. If I had -- if I had all the Bank of
13 New York accounts statements in front of me now, I can
14 determine that.

15 Q. But they would have that information?

16 A. Of course.

17 Q. Investments of the SAR account can't be made
18 without their cooperation, right?

19 A. That's correct.

20 Q. And they've presented no evidence on when that
21 SAR account first went into auction rate securities,
22 have they?

23 A. To my knowledge, no.

24 Q. They would also know when those auction rate
25 securities first became illiquid, right?

1 A. I don't have firsthand knowledge of that.

2 Q. But again, they haven't presented any evidence
3 on that either?

4 A. That's correct.

5 Q. So to the best of your knowledge, it's
6 certainly possible that there were auction rate
7 securities in the SAR account the date the case began
8 and Bank of New York knew that at the time, correct?

9 A. Correct.

10 Q. Now, Mr. Young, you've indicated that --

11 A. May I change my answer?

12 Q. Be my guest.

13 A. I don't -- repeat the question, if you would,
14 please. I'm afraid I may have misanswered your
15 question.

16 Q. I'll just shorten it. It's entirely possible
17 that there were auction rate securities in the SAR
18 account the day this case was commenced, correct?

19 A. It is possible, correct.

20 Q. And Bank of New York would know if that's the
21 case?

22 A. Correct.

23 Q. And they have offered no evidence in that
24 respect?

25 A. Correct.

1 Q. And it's entirely possible that those auction
2 rate securities became illiquid long before the date in
3 April where you reclassified them, correct?

4 A. It's possible.

5 Q. Okay. And so if Bank of New York had been
6 granted permission to foreclose back when the cash
7 collateral order stipulation we're all fighting about
8 was entering last June, it's entirely possible once they
9 got to a foreclosure, they would have foreclosed on
10 illiquid auction rate securities, right?

11 A. That is possible, but again, I don't have any
12 firsthand knowledge to support that.

13 Q. But Bank of New York would have that
14 information?

15 A. Correct.

16 Q. Mr. Young, you're a CPA, right?

17 A. Correct.

18 Q. And so I'm sure you're familiar with the
19 phrase GAP, or generally accepted accounting principles,
20 right?

21 A. Right.

22 Q. Would you agree with you see that term in a
23 credit agreement or in a similar document, there's often
24 the words consistently applied stuck after it, that you
25 often see a requirement that a borrower keep its books

1 according to GAP consistently applied; is that fair?

2 A. That is a fundamental of reporting, correct.

3 Q. Okay. It's a fundamental of reporting. And
4 the reason for that is because GAP may say there's
5 several ways that you can properly account for something
6 but if you change your method in the middle, you can
7 give a misimpression; is that fair?

8 A. That's fair.

9 Q. Okay. Do we have a bit of the same problem
10 here, when you move the auction rate securities from the
11 cash line to a different line it gives the impression
12 that there has been a huge change in the company's
13 status but if you had the same auction rate securities
14 before as you do now, you're now presenting them
15 differently?

16 A. We do, which is why I provided the footnote
17 disclosure.

18 Q. So what you're saying is that looking at the
19 big stuff up here without reading the footnotes could
20 be -- could lead to confusion?

21 A. Always start with the footnotes.

22 Q. Always start with the footnotes. Mr. Young, I
23 just have one last question I just want to get correct
24 for myself. At one point I had seen you are the interim
25 CFO of the company, another point I've seen you are the

1 CFO of the company. Which are you?

2 A. I am the interim chief financial officer of
3 the company.

4 MR. JONES: Thank you. Your Honor, I
5 have no further questions. Thank you, Mr. Young.

6 THE COURT: All right.

7 MR. FROMME: I have a few questions for
8 the witness and then he can follow-up if you like.

9 Your Honor, Eric Fromme, Gibson Dunn &
10 Crutcher on behalf of Scotia Pacific. To assist you,
11 Your Honor, if you want to follow along, in your
12 notebook, tab 7 is Mr. Young's declaration with all the
13 exhibits. I don't think anybody pointed that out to
14 you.

15 THE COURT: I have been on it the whole
16 time.

17 MR. FROMME: Okay. Great.

18 CROSS-EXAMINATION

19 BY MR. FROMME:

20 Q. What I'd like to do is just clarify some items
21 that occurred throughout the questioning, Mr. Young.
22 Your declaration summarizes the current state of the
23 debtor as of June 27th, 2008 compared to the petition
24 date; is that fair?

25 A. My declaration provides certain data as of

1 June 27th, I think would be a more fair way to
2 characterize it, compared to the petition date. But I
3 can't say that that would reflect the financial position
4 of the entire company as of June 27th. Only certain
5 accounts.

6 Q. Right. So for example, on paragraph 5 you
7 state the cash -- the amount of cash Scopac had in its
8 operating account, right?

9 A. Yes.

10 Q. And that was \$4.3 million?

11 A. Correct.

12 Q. And then you state how much -- how much cash
13 or cash equivalent was in the SAR account as of the
14 petition date, right?

15 A. That's correct.

16 Q. Okay. And that was approximately \$39.8
17 million; is that right?

18 A. Correct.

19 Q. So then the next section of your declaration
20 you describe the current asset value of some of the
21 assets of Scopac. And in Exhibit -- in Exhibits A
22 through C which we went through were -- are documents
23 that document those numbers; is that fair?

24 A. That's fair.

25 Q. Okay. So Exhibit A is an account statement of

1 the SAR account; is that right?

2 A. That's correct.

3 Q. Could you flip to Exhibit A, please?

4 A. I have Exhibit A.

5 Q. Exhibit A is on the screen for everybody. So
6 you identify each type of security in the SAR account as
7 of June 27, 2008; is that right?

8 A. Correct.

9 Q. And that's the most up-to-date information you
10 could provide for this hearing; is that fair?

11 A. Correct.

12 Q. And this includes the timber notes, the
13 auction rate securities and the treasuries?

14 A. Correct.

15 Q. And you would view the treasuries as liquid
16 investments?

17 A. Yes.

18 Q. You also summarize the cash position of the --
19 of Scopac on -- in paragraph 11 of your declaration and
20 it refers to Exhibit B of your declaration; is that
21 fair?

22 A. That's fair.

23 Q. And what we're doing here is we're just
24 walking through the current asset value of the debtor's
25 as of -- as close as we can get to this hearing date as

1 possible; is that what you're doing?

2 A. Correct.

3 Q. And if you flip to Exhibit B --

4 A. I tried to use Friday as a cutoff date to
5 update this information.

6 Q. With the understanding that we had a hearing
7 on Monday?

8 A. Exactly.

9 Q. Turn to Exhibit B of your declaration. Do you
10 recognize that?

11 A. I do.

12 Q. And is that something that you prepared?

13 A. It is.

14 Q. What is it?

15 A. This would be the most recent variance report
16 and the narrative that accompanies the variance report
17 reporting actual receipts and disbursements against the
18 budget that was provided with the final order
19 authorizing the use of cash collateral.

20 Q. Okay. And you summarize the debtors, Scopac's
21 liquidity position in that cover e-mail; is that right?

22 A. That's right.

23 Q. And what is Scopac's liquid or cash assets as
24 of June 27th, 2008?

25 A. \$4,394,061.

1 Q. And then we turn to the Exhibit C. Everybody
2 has gone through Exhibit C in great detail and that's
3 the monthly operating report; is that right?

4 A. Correct.

5 Q. There's one -- flip to page 2 of the monthly
6 operating report and take a look at the accounts
7 receivable line. You're familiar with that?

8 A. I am.

9 Q. Okay. The amount in the column entitled month
10 May 2008 is \$11.1 million approximately; is that right?

11 A. Right.

12 Q. Do you know what's the components of those
13 receivables?

14 A. Generally I do, yes.

15 Q. What are they?

16 A. They are receivables from Palco. And they
17 consist of the approximate \$1.8 million that was
18 pre-petition. Approximately \$4.3 million that would
19 relate to the January log sales to Palco, January 2008
20 log sales to Palco which were not collected. And the
21 balance which should be approximately \$5 million or \$4.9
22 million relate to May log sales that have been since
23 collected in the month of June.

24 Q. Does Scopac have any accounts receivables from
25 third-parties or parties other than Palco?

1 A. They may. If they do, they would be minor.

2 I'm not aware.

3 Q. Let me ask you this: Is Scopac selling
4 Douglas Fir to parties other than Palco?

5 A. We do have -- we do have some third-party log
6 sales. I'm not aware of any of those being reflected in
7 this accounts receivable number.

8 Q. Flip to page 5 of 10 of the monthly operating
9 report. Do you see that?

10 A. I do.

11 Q. And what are you telling us on page 5 of 10?
12 Explain to the Court what that says.

13 A. These are generally the numbers I just went
14 through with you. In the over 90 you have the \$1.8 --
15 I'm going to speak in approximate numbers, if that's
16 okay.

17 Q. Sure.

18 A. You have -- in the 91 plus days, you have here
19 \$6.2 million which would be the pre-petition receivable
20 from Palco of approximately 1.8. And then you also have
21 the receivable for January 2008 log sales of
22 approximately \$4.3 million.

23 Q. So on that \$6.1 million, do you know whether
24 Scopac asserts an administrative claim on those, on
25 those claims? Do they assert an administrative claim in

1 Palco's bankruptcy case? Do you know whether that's the
2 case or not?

3 A. On the -- they would on the -- they would on
4 the post-petition amount, I believe, but not the
5 pre-petition. I don't -- I don't recall the
6 pre-petition. I know we have the netting issue, but I
7 don't know how the pre-petition amounts are dealt with.

8 Q. And now on the next item there.

9 A. Specifically.

10 Q. Under aging accounts receivable 0 to \$35.024
11 million?

12 A. Yes, for the most part that would be the May
13 log sales to Palco which were then collected in June.

14 Q. So Scopac's received payment for those log
15 sales?

16 A. They would have received payment for this
17 receivable but in the process of -- over the course of
18 the month would have built up another receivable.

19 Q. Because in June --

20 A. You're constantly paying down receivables and
21 building up receivables as you sell more logs. So on
22 the 5th of June and on the 20th of June, payment for an
23 amount approximately \$5 million was made, but since the
24 end of May, there would also be a buildup of an accounts
25 receivable as Scopac continues to sell logs to Palco.

1 Q. Okay. Just to be clear then, so Scopac
2 continues to sell logs to Palco in the month of June and
3 they only get paid for those in the month of July; is
4 that right?

5 A. Correct.

6 Q. So when you do a monthly operating report for
7 June, it's the log sales for June and the receivable
8 that's owing that will get paid in July is reflected
9 there; is that right?

10 A. Yeah.

11 Q. Okay. Now, Mr. Neier asked you some questions
12 about the Marathon provided a carveout for -- if it's
13 security interest in Palco's assets to give Scopac
14 insurance payments for the logs that are being shipped
15 in June and the logs that will be shipped in July. Do
16 you remember that?

17 A. I do.

18 Q. What's your understanding of how the carveout
19 works?

20 A. That we have a lien in the -- in the Marathon
21 collateral for the amount of the log sales to Palco at,
22 I believe it's SBE less 100. Or the SBE rate less \$100
23 per thousand. So that there -- so we have a security
24 interest in Marathon's collateral that would cover those
25 sales in the event that Palco does not pay.

1 Q. Okay. Could you go back to monthly operating
2 report page 2. And I just want it to be clear for the
3 record that in the cash line item where it lists
4 \$5,047,057, do you see that?

5 A. I do.

6 Q. The more up-to-date cash position of Scopac is
7 reflected in exhibits -- in Exhibit B to your
8 declaration; is that right?

9 A. Help me. Exhibit B is which one?

10 Q. Exhibit B is the --

11 A. Yes.

12 Q. -- budget variance report?

13 A. That's correct.

14 Q. And finally there was a lot of -- just one
15 minute. There were a lot of questions about
16 professional fees. Do you remember those?

17 A. I do.

18 Q. Okay. Turn to Exhibit D of your declaration.
19 And you testified earlier that you had this document
20 prepared for you?

21 A. I did.

22 Q. Did you review it?

23 A. I did.

24 Q. And did you -- did you determine that it was
25 accurate to the best of your knowledge?

1 A. I did.

2 Q. And this is the most up-to-date information
3 you have relating to professional fees paid by Scopac?

4 A. It is.

5 Q. Another point of clarification for you.
6 You -- turning back to monthly operating report page 2.
7 Thanks, John, again.

8 There were some questions about the
9 pre-paid expense line item. Do you see that?

10 A. I do.

11 Q. Those are the THP costs?

12 A. Yes.

13 Q. How would the Noteholders or the Indenture
14 Trustee benefit from the preparation of the THPs, do you
15 know?

16 A. If the Noteholders were to operate the lands,
17 they would benefit from those costs having been incurred
18 in order to secure the THPs. Beyond that, I'm not sure
19 how they would -- how they would benefit unless there
20 was some sort of working capital adjustment involved in
21 the sale.

22 Q. Okay. Now, the next -- you were asked some
23 questions about what the -- what the Indenture Trustee
24 has as a security interest. Do you remember that, what
25 it claims a security interest in? Do you remember that?

1 A. Yes.

2 Q. Now, have you ever reviewed the deed of
3 trust --

4 A. I have not.

5 Q. -- in this case? So do you know what all --
6 the entire list of items that the Indenture Trustee
7 claims a security interest in?

8 A. I do not.

9 Q. You were asked some questions about the log
10 deck and the inventory lab item on the monthly operating
11 report. Do you remember that?

12 A. Yes.

13 Q. And you testified several times that the
14 column entitled -- beginning January 18, 2007 which is
15 the filing date, that you would make some corrections to
16 that. Do you remember that? That it was based on the
17 schedule of -- the schedule liabilities and assets?

18 A. It was based on a document that I did not
19 prepare, but that was issued by the debtor. So I don't
20 know how -- I don't know how those numbers -- I don't
21 know the source of those numbers. But what I do know is
22 that as of, for instance, here January 2008, are we
23 talking about -- we're on retainers now, right?

24 Q. No. We're on inventory.

25 A. Inventory. I'm sorry.

1 Q. Just generally you testified that there were
2 some areas that you would correct and you're giving an
3 example of retainers was one of those items, right?

4 A. I don't know that I would say correct, but I
5 would not -- I would report differently.

6 Q. Okay. Would you -- on the inventory item,
7 would you change anything on that inventory column for
8 Scopac's inventory as of the petition date?

9 A. No.

10 Q. And that's because Scopac didn't have an
11 inventory of logs as of the petition date; is that
12 right?

13 A. That's correct.

14 Q. But it currently has an inventory of logs, we
15 all know that.

16 A. Correct.

17 Q. And in your declaration, you stated it's
18 approximately 4.4 billion MBF logs; is that right?

19 A. 4.4 million board feet.

20 Q. Thank you. And you ascribe an estimate of
21 value to that based on the sale to Palco; is that right?

22 A. Well, I think it is more careful than that. I
23 assumed -- I think I suggested that if you use an SBE
24 rate, that it would yield a value of approximately 3. --
25 I believe it was \$3.3 million.

1 Q. Now, there was a lot of -- you said -- I'm
2 sorry. To follow through on that, you need to turn to
3 your declaration to refresh your recollection?

4 A. I'm looking right now.

5 Q. That was paragraph 13?

6 A. That's correct.

7 Q. And you have a qualifying statement in there
8 at the very end where it says "excluding any
9 reimbursement for log and haul costs"?

10 A. Correct.

11 Q. Can you explain to the Court what you meant by
12 that.

13 A. When Scopac sells logs to Palco, they -- and
14 then Palco in turn pays Scopac, they pay the SBE rate
15 and then they also reimburse Scopac for log and haul
16 costs, which would be incremental to the \$3.3 million.

17 Q. Now, you were asked some questions about a --
18 a lot of questions about the auction rate securities.
19 Do you remember that?

20 A. Yes.

21 Q. And you were asked who had authority to
22 purchase the securities, when were they purchased, all
23 of those questions. Do you remember that?

24 A. I do.

25 Q. Do you know whether Scopac authorized the

1 purchase of the securities like auction rate securities
2 in general? Do you know whether they have ever
3 authorized such a purchase?

4 A. What I do know is that there was a board
5 resolution in January 2006 that authorizes investment in
6 auction rate securities.

7 MR. FROMME: I have no further questions,
8 Your Honor.

9 THE COURT: All right.

10 MR. SHIELDS: Simon, would you put up
11 page 2 of 10 of the monthly operating report.

12 Your Honor, may I approach the witness?

13 THE COURT: You may.

14 MR. SHIELDS: This has been marked for
15 identification as IT Exhibit 164. And I'll provide
16 copies.

17 MR. GERBER: They have it already.

18 REDIRECT EXAMINATION

19 BY MR. SHIELDS:

20 Q. I'll partially identify it by its title.
21 Scotia Pacific Company LLC certificate of resolutions
22 adopted by the board of managers January 5, 2006. And
23 it authorizes the company to do certain things,
24 including, as I read it, buy auction rate securities.
25 But the question for you is: Do you recognize the

1 document and is it the corporate resolution of Scopac's
2 board of managers in the January 2006 time frame that
3 you refer to in your testimony in response to
4 Mr. Fromme's questions?

5 A. I do recognize the document and this is the
6 document to which I was referring.

7 Q. Does it look like it's a true and correct copy
8 of the document?

9 A. Yes, it does.

10 Q. Okay.

11 MR. SHIELDS: Your Honor, I know you're
12 not wanting to do this piecemeal but since I got it so
13 close on the heels of authenticating it, I would like to
14 go ahead and offer it into evidence.

15 SPEAKER: Your Honor, excuse me, we're
16 having a hard time hearing on the phone.

17 THE COURT: He's not standing near a
18 microphone. He walked to the witness but started
19 talking. We have a certificate of resolution adopted by
20 the board of managers on February 5, 2006 in which --
21 does anybody object to it?

22 MR. NEIER: No objection, Your Honor.

23 THE COURT: It's admitted.

24 MR. SHIELDS: Take down the chart for
25 just a minute. I know everyone is really dying to look

1 at the chart.

2 Q. (By Mr. Shields) But this brief line of
3 questions is sort of independent of your monthly
4 operating report. I want to refer you, Mr. Young, to
5 the line of questions that you were asked by counsel for
6 Bank of America, Mr. Jones, with respect to when the
7 auction rate securities might have been in the SAR
8 account and generally accounted -- generally accepted
9 accounting principles and that sort of thing. So that's
10 the general topic that I want to go into.

11 You've testified you've been the interim CFO
12 of Scopac since March of 2008, correct?

13 A. No.

14 Q. I'm sorry. Just -- I didn't mean to misstate
15 your testimony.

16 A. May.

17 Q. May. Thank you. And that you have been in --
18 doing consulting work in the financial area, in part,
19 for Scopac for -- since March of 2007, right?

20 A. That's correct.

21 Q. I knew there was a March in there. You have
22 stated that the monthly operating reports are taken very
23 seriously by you because it's important they be accurate
24 and they're filed under penalty of perjury. Before you
25 started signing and filing these monthly operating

1 reports for Scopac with the bankruptcy court, were they
2 signed by your predecessor as CFO Gary Clark?

3 A. They were.

4 Q. And do you have any reason to believe that
5 Gary Clark didn't take his responsibilities in preparing
6 these monthly operating reports as seriously as you do?

7 MR. JONES: Your Honor, objection, calls
8 for speculation.

9 A. I know Gary Clark very well. He's an
10 honorable --

11 THE COURT: I'll let him answer.

12 A. As I said, Gary Clark would have taken these
13 as seriously.

14 Q. Okay. And Gary Clark was -- in your opinion,
15 was he doing his best to prepare the balance sheet
16 portion of the monthly operating reports during the time
17 that he was CFO, which I think covered from the petition
18 all the way to May of 2008 under generally accepted
19 accounting principles consistently applied?

20 THE COURT: First of all, and we've got a
21 U.S. trustee representative here. I don't think anybody
22 believes monthly operating reports are under generally
23 accepted accounting principles, never been that way,
24 never will be. That's one of the problems we have in
25 bankruptcy. And I don't mean to be saying anything. I

1 know they create those forms and they do the best they
2 can because what they want is something for normal,
3 usually smaller businesses that gives you an accurate
4 cash flow projections and things with companies. And in
5 big cases, the monthly operating reports probably don't
6 mean nearly as much as the monthly financial statements
7 do, but they're still followed and filed and they do the
8 best I'm sure that they can. But I don't want the
9 record to somehow suggest to somebody that these things
10 are generally accepted accounting principles.

11 MR. SHIELDS: I appreciate that, Your
12 Honor. I was following up on the previous testimony.

13 Q. (By Mr. Shields) All other things being
14 equal, if Gary Clark prepared balance sheets for Scopac
15 and treated the auction rate securities as being cash --
16 I'm sorry. Let me rephrase the question.

17 If Gary Clark treated the cash amount, cash
18 line on any balance sheet he prepared for Scopac
19 consistent under generally accepted accounting
20 principles and as consistently applied, wouldn't the
21 fact that you didn't see fit to recharacterize auction
22 rate securities from cash to investments until you
23 prepared -- you did it in what month, March -- pardon
24 me, April of 2008. That with no other facts is
25 consistent with there being some change in the liquidity

1 of the auction rate securities that didn't occur prior
2 to April of 2008, right?

3 MR. FIERO: Objection, the question is
4 misleading, it's unintelligible.

5 THE COURT: We get so few out of him, I
6 feel like I should listen. Reask the question. I think
7 what you're trying to say -- what are you trying to say?

8 MR. SHIELDS: There were questions asked
9 about could the auction rate securities have been, you
10 know, in the SAR account all along and could they have
11 been illiquid as of the petition date and so forth.

12 THE COURT: I guess the first question we
13 should ask is, is there any guidance from you as trustee
14 on auction rate securities whether they're listed as
15 cash or something else under a monthly operating report.

16 MR. STERBACH: Not that I'm aware of,
17 Your Honor.

18 THE COURT: Okay. Now, ask him about
19 that in terms of GAP if you like.

20 Q. (By Mr. Shields) In terms of GAP, if one
21 looked at balance sheets of Scopac and they saw cash
22 amounts that ran along at a certain level and we found
23 out after the fact they were not reclassified until
24 April of 2008, that would be an indication that auction
25 rate securities that might have been purchased before

1 were not considered illiquid until their classification
2 was changed from cash to investment, right?

3 A. That's correct.

4 Q. All right. Now, you've been through a lot of
5 questions on 2, 2 of 10. I do want to put it back on
6 the board for just a minute.

7 A. Yes.

8 Q. A number of questions that you were asked had
9 to do with whether you agreed with the accounting
10 characterizations and classifications of these, I'll
11 call them balance sheet assets that you have as we see
12 on monthly operating report page 2 of 10. And you
13 confirm with some changes to update and so forth many of
14 these classifications. But my follow-up question is
15 this: I want to focus on the extent to which the
16 diminution in cash from the \$44 million or whatever you
17 testified to -- and I'm not trying to change your
18 testimony -- down to the \$5 million that was there in
19 May, whether the morphing of that into so called working
20 capital as shown on this balance sheet, what it did to
21 the security interest of the Indenture Trustee, its lien
22 that it had on assets.

23 Now, if you assume with me for the
24 purpose of this line of questions that the Indenture
25 Trustee doggone sure did have a lien in the cash of

1 Scopac by reason of the Indenture Trustee, the question
2 is as to these various categories of bookkeeping assets,
3 do they have a lien in those assets and has the change
4 of their status from cash to these other assets, are
5 they still available to satisfy the Indenture Trustee?
6 Okay. Accounts receivable, first of all.

7 MR. JONES: Your Honor, objection. It's
8 a legal question. The witness doesn't know whether they
9 have a lien on it. He's already testified he hasn't
10 read the mortgage.

11 A. I can't answer questions on a lien on account
12 receivable.

13 Q. Do you have any knowledge whether --

14 THE COURT: Hold it. Somebody tell me
15 from your table. Do you think you have a lien on
16 accounts receivables?

17 MR. GERBER: We do, Your Honor, but Your
18 Honor, the question is he's testified as to the offsets
19 associated with that. What's available. The same sort
20 of thing with respect to the pre-petition --

21 THE COURT: Well, do you think there's
22 anything on that asset list that you don't have a lien
23 on?

24 MR. GERBER: But that's not the question,
25 Your Honor. We have a lien on the cash. That's the

1 exact question.

2 MR. SHIELDS: No.

3 THE COURT: You can answer your question
4 and then answer mine.

5 MR. GERBER: Something is \$44 million,
6 okay? When it's morphed into pre-paid restructuring
7 retainers that are subject to a prior claim, our
8 interest, the value of that \$514,000 that is available
9 to the Indenture Trustee was reduced because now the
10 professionals who hold those retainers have a prior
11 claim that's ahead of our lien. They can offset it.
12 Those retainers were given to the attorneys or other
13 professionals for purposes of securing payment of their
14 fees. So their fee is satisfied first.

15 THE COURT: You agree that you have a
16 lien on all of it but you believe you've been primed as
17 to professional retainers?

18 MR. GERBER: Yeah, primed or in some
19 cases, other, for example, we don't know if we have a
20 lien on that. I'll give you that because no one can
21 tell us what other represents. Similarly --

22 THE COURT: Do you think there's any
23 category of asset you don't have a lien on?

24 MR. GERBER: But Your Honor, I don't know
25 what other is because no one tells me what it is. I bet

1 there is something. I may not have a lien. I may not
2 have --

3 THE COURT: I've got to believe that
4 whoever drew up your deed of trust described every asset
5 that included other.

6 SPEAKER: But Your Honor, Your Honor.

7 MR. GERBER: Okay. Your Honor, let's say
8 we -- let's say we do. Okay. Let's say we do, I agree
9 with you, we have a lien on everything, okay, but that
10 doesn't mean like in the example of the retainers that I
11 gave you --

12 THE COURT: That's a different argument.
13 We don't know what the other is. And it may be other is
14 a deposit held by somebody that you can't get to also.

15 MR. GERBER: Prepaid expenses, those are
16 the paint on the walls and the paving. How do I
17 foreclose on that lien and turn that into value for the
18 Indenture Trustee?

19 THE COURT: That's a different issue.

20 MR. GERBER: They may have spent \$6.5
21 million of my client's money, my client's collateral to
22 build a new road but I'm never going to be able, if I
23 have the right to foreclose on the road --

24 MR. NEIER: Your Honor, that's absurd.
25 When they liquidate on the forest they revalue that.

1 THE COURT: I really don't want to get
2 into this argument until we get to arguments.

3 SPEAKER: But Your Honor, excuse me, this
4 is Isaac Pachulski, I apologize for interrupting. May I
5 be heard on this for just a minute?

6 THE COURT: Sure.

7 MR. PACHULSKI: And just for the record,
8 Isaac Pachulski of Stutman, Treister & Glatt appearing
9 on behalf of Aurelius, Davidson Kemper and Angelo
10 Gordon. Your Honor, he asked the question do we have a
11 lien, but there's another question that's important
12 here. And I don't mean to argue. And what I was going
13 to do is ask the witness some questions to establish
14 this. But the question is, what happens to all of this
15 stuff under the plan? And I think part of this
16 questioning gets us there because under the plan, our
17 lien on everything but the timberlands where the Court
18 said we have to get at least \$510 million and the cash
19 in the operating account, which after I brought it to
20 the Court's attention the Court was kind enough to
21 augment its findings to address it. Under the plan
22 there is no working capital adjustment. You recall the
23 witness talked about a working capital adjustment.
24 Under the plan whether the log deck is \$100,000 or \$100
25 million, we get nothing. Under the plan, and I'll save

1 this part for argument, we get nothing on account of the
2 Palco accounts receivable. Under the plan there is no
3 adjustment for the retainers. Under the plan -- and
4 I've been listening perhaps too quietly. People have
5 been arguing for the last hour about pre-paid expenses
6 and retainers and log decks and there's a very simple
7 problem. This might be interesting if we actually got
8 credit but under the plan we don't get credit for roads,
9 we don't credit for prepaid expenses, that has all been
10 taken away from us for nothing. And we objected to that
11 and it was overruled and I'm not going to reargue it.
12 But if you take millions of dollars in cash on which we
13 had a lien and which Your Honor just said we were going
14 to get an adjustment and you turn it into a bunch of
15 stuff on which we may have a lien but on which there's
16 no adjustment, Your Honor, that collateral is gone. And
17 the issue of whether we have a lien on it or don't have
18 a lien on it is very intellectually interesting but it
19 doesn't matter because Your Honor's findings and
20 conclusions, and I'm not rearguing them, established
21 that we get no value for anything except \$510 million
22 for the timberlands and some adjustment for cash. And
23 just so the record is clear, and I think that's part of
24 where these questions were going to establish, we don't
25 get any of this. So I don't know why people are arguing

1 so much about it. And I apologize for interrupting but
2 I think we're just spending a lot of time on something
3 that's irrelevant under the plan and can't be considered
4 anymore.

5 MR. NEIER: Your Honor, we're not going
6 to --

7 MR. SHIELDS: I haven't -- I have a
8 question.

9 MR. NEIER: Excuse me. Excuse me. All
10 right. Your guy interrupted, I'm now entitled to
11 address it.

12 THE COURT: This is not his guy.

13 MR. NEIER: Your Honor, I'm not going to
14 belabor this. I'm not going to belabor the Court with
15 further argument, I'm just going to say that
16 Mr. Pachulski's understanding of the plan is completely
17 incorrect. And we're not here to talk about liens,
18 we're here to talk about an administrative claim. The
19 Court is looking at whether an administrative claim
20 should be allowed. It has nothing to do with liens or
21 anything else. It has to --

22 THE COURT: We've already been arguing
23 here for a while so let's get back to questions.

24 MR. SHIELDS: I feel real good about that
25 last question. It stirred up a lot of interest and

1 discussion. I hope the Court found it helpful.

2 Q. (By Mr. Shields) One last question about the
3 auction rate securities. Were you here during the
4 testimony of Mr. Radecki?

5 A. I was.

6 Q. Okay. And in talking about what is possible
7 about when the auction rate securities may have been in
8 the account and what's possible about when they went to
9 an illiquid status, you know Mr. Radecki testified that
10 it happened post-petition as part of the credit crunch
11 and the other problems that were part of his, correct?

12 MR. JONES: Objection, misstates the
13 testimony. Mr. Radecki didn't address these specific
14 auction rate securities.

15 THE COURT: Sustained.

16 Q. (By Mr. Shields) Did you hear his testimony
17 about the impact of the credit crunch, the subprime
18 crisis, etcetera on auction rate securities generally?

19 A. Yes.

20 Q. And that his testimony was that that occurred
21 post-petition, correct?

22 A. Correct.

23 Q. All right. One -- one last question. With
24 respect to the inventory item on 2 of 10, the so-called
25 Scopac log deck that you show as having a value of

1 \$526,000, isn't it a double count to treat that as an
2 asset over here as inventory -- well, let me rephrase
3 it.

4 Before it became inventory, it would have been
5 standing timber in the forest and part of what the
6 Indenture Trustee has a lien claim on, right? It would
7 have been part of the value of that forest, correct?

8 A. Correct.

9 Q. Okay. And so taking it down from the forest
10 and putting it on a log deck doesn't add \$3.3 million
11 worth of value to the Indenture Trustee, does it? It
12 just changes where it is from a forest to a log deck,
13 right?

14 A. Without -- without regard to value, I mean,
15 you are -- yes, you're taking trees from the forest and
16 you're putting them in a pile.

17 Q. You mention that log and haul costs were not
18 included in this value of the inventory. How much --
19 I'm sorry. Am I miss -- did I misunderstand?

20 A. That's all that's included in the value of
21 the -- the inventory shown here is on a cost basis so
22 this is the cost to produce the logs which are currently
23 held in inventory.

24 Q. Okay. Last question. In looking at, you
25 know, comparing numbers on page 2 of 10 cash \$46

1 million, cash \$5 million, etcetera. With respect to the
2 accounts receivable, if I understood what you said in
3 response to Mr. Fromme's questions, actually, that is
4 not an \$11 million balance sheet asset at the moment
5 because you had, what, \$4 and a half million dollars
6 paid by Palco?

7 A. What had happened since May 31st is we would
8 have collected receivables which would be a reduction of
9 accounts receivable and that's approximately \$5 million,
10 and then we would have sold more logs to Palco and so
11 that is an increase in the receivable. And sitting
12 here, I don't know what we've sold to Palco which would
13 increase that receivable since May 31st.

14 Q. Okay. Is there any amount of the accounts
15 receivable as shown on 2 of 10 that's currently
16 available to satisfy the Indenture Trustee's lien?

17 A. I can't answer that question.

18 Q. Can you answer this question: How much is
19 available with respect to the \$24 million in investment
20 in auction rate securities to currently satisfy the
21 Indenture Trustee's lien?

22 A. I can't answer that question.

23 Q. You tried to monetize them and got zero and
24 you had no opinion as to any value that might be
25 available for the Indenture Trustee, correct?

1 A. That's correct.

2 MR. SHIELDS: I pass the witness.

3 MR. JONES: Your Honor, I have two quick
4 redirect questions, if I may.

5 THE COURT: All right.

6 MR. JONES: Thank you.

7 RECROSS-EXAMINATION

8 BY MR. JONES:

9 Q. Mr. Young, I'll talk as I'm walking. Evans
10 Jones on behalf of Bank of America. Mr. Young, you'll
11 recall Mr. Shields asked questions, I'm not going to get
12 them exactly right but they were essentially Mr. Clark
13 is an honest man and if he reclassified the auction rate
14 securities in -- and I apologize, my chart is down, I
15 think it's April, that essentially must have been when
16 he thought they became illiquid. Do you recall
17 generally that discussion?

18 A. I do.

19 Q. Okay. You were here at the confirmation
20 hearing when the auction rate securities issue first
21 came up, weren't you?

22 A. I was.

23 Q. And after that hearing, did you hear Mr. Clark
24 say to various constituents, including my client, words
25 to the effect of the first --

1 MR. SHIELDS: Excuse me, Your Honor, I'm
2 going to object to this as hearsay. They're talking
3 about something that happened out in the hall.

4 THE COURT: I don't know what he's
5 talking about. Go ahead and ask the question.

6 MR. JONES: Thank you, Your Honor.

7 Q. (By Mr. Jones) Did you hear Mr. Clark say
8 words to the effect of the first time I knew about these
9 auction rate securities was when I tried to access them
10 last week and couldn't get the cash?

11 A. I'm not familiar with that comment.

12 Q. Did he ever tell you when he first found out
13 about them?

14 A. I believe that I'm the one who informed him of
15 the auction rate securities.

16 Q. And when did you inform him?

17 A. Approximately mid April. I don't know the
18 exact date. Toward mid April.

19 Q. And that was after the reclassification,
20 right?

21 A. That would have been before the
22 reclassification was actually done. We had not -- we
23 had not completed an analysis of the situation at the
24 time the March monthly operating report was released.
25 We did have -- we had been able to develop an

1 understanding of the liquidity situation of those
2 holdings when we released the April monthly operating
3 report. And at that time, we reclassified those assets.

4 Q. And that's when you first discovered that they
5 were illiquid?

6 A. Yes.

7 Q. Had you tried to access them the prior month?

8 A. It wasn't -- we weren't -- we weren't
9 attempting to -- we weren't attempting to access the
10 auction rate securities. We still had -- we still had
11 other sources of liquidity in the SAR account, so as I
12 would -- as I would contact Maxxam or someone working
13 for me or at the time someone I was advising would
14 contact Maxxam and request that Maxxam transfer funds
15 from the SAR account to the debtor's U.S. bank account,
16 which I'll refer to as the operating account, there was
17 liquidity available to do that. So we never -- we never
18 needed to transfer funds from the SAR account to the
19 U.S. bank account and were told there's nothing
20 available because of the auction rate securities.

21 Q. So let me see if I have this correct. What
22 you're telling me is in March, for the first time you
23 needed to try and access those auction rate securities
24 and discovered they're not liquid. But that doesn't
25 have any impact on when they became illiquid. That's

1 just when you found out the cupboard was bare. Is that
2 fair?

3 A. No, I don't think that accurately
4 characterizes what I just said.

5 Q. Prior to March you had been able to access
6 other assets in the account when you needed cash, right?

7 A. Correct.

8 Q. March was the first time you needed to try to
9 access the auction rate securities, right?

10 A. No.

11 Q. Okay. When did you first access the auction
12 rate securities?

13 A. Great question. I don't know the answer to
14 that. But what I do know is that I am regularly asked
15 questions by the financial advisors to the people that
16 are in this room what is the balance of the SAR account
17 and I'm in regular contact with Maxxam asking them what
18 do we have in the SAR account today. And then I was --
19 some time in April I contacted Delona Moore. It was on
20 a Friday morning, I remember it very well, and asked her
21 and that's when she told me that we were holding auction
22 rate securities. That was the first time that I
23 realized that we were even investing in auction rate
24 securities. And having read --

25 Q. I'm sorry. That was April?

1 A. April.

2 Q. Okay. Thank you. I'm sorry. Continue.

3 A. So I immediately called Gary Clark and he, as
4 was I, was generally familiar with the liquidity issues
5 of auction rate securities just from reading the press
6 and having read some of the stories on the issue. And
7 so then that's -- I found out and I called Gary and I
8 explained to Gary what we were holding, the dollar
9 amount and the liquidity issue.

10 Q. Okay. And it was your impression that until
11 you told Mr. Clark in April, he didn't know there were
12 auction rate securities in the SAR account?

13 A. That's what I believe.

14 Q. Okay. And just to complete this circle, in
15 April you and Mr. Clark learned that there were auction
16 rate securities there, you learned that they were not
17 liquid. You have no way of knowing how long they were
18 there or how long they were illiquid prior to that; is
19 that fair?

20 A. That's fair.

21 MR. JONES: Thank you. No more
22 questions.

23 MR. SHIELDS: One question.
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RE-DIRECT EXAMINATION

BY MR. SHIELDS:

Q. You have been, by reason of your work with Xroads in the financial area, particularly in restructuring and so forth for quite some time, right?

A. Yes.

Q. Do you follow the financial markets as part of just staying abreast of what's going on in your field?

A. Generally.

Q. Okay. And so leaving aside these particular auction rate securities that are in the SAR account, you know, don't you, from following the financial markets, that the liquidity crisis that caused auction rate securities in general to become illiquid occurred after the filing of this bankruptcy, didn't you?

MR. JONES: Objection, Your Honor.

Q. (By Mr. Shields) You know that, don't you?

MR. JONES: There's no expertise on that. Your Honor, he's trying to get back to the one objection that I got sustained today which was when he wanted to ask when did these securities become illiquid based on Mr. Radecki's testimony.

MR. KRUMHOLZ: Take judicial notice that it happened after the petition. I'm offended by the fact that Mr. Jones is even suggesting otherwise. This

1 is nuts. Everything -- everything that happened as to
2 auction rate securities and everybody in this room knows
3 that, except evidently Mr. Jones.

4 THE COURT: Well, you know the answer to
5 that question?

6 MR. SHIELDS: I'm just asking his
7 understanding.

8 THE COURT: Do you have an understanding
9 about when all of this happened?

10 THE WITNESS: Yes, sir, I do. Not
11 specifically, but generally based on everything that
12 I've seen --

13 THE COURT: Was it after January of 2007?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 MR. SHIELDS: No further questions.

17 THE COURT: All right. You can step
18 down. Next witness.

19 MR. KRUMHOLZ: Your Honor, we call
20 Richard LaMont.

21 MR. NEIER: Your Honor, we don't think
22 it's appropriate to call somebody else's expert as their
23 witness. If it is a fact witness, of course you can
24 call a fact witness any time he wants but the law is
25 pretty clear you can't call somebody else's expert. He

1 was retained by us, we are going to present him as a
2 witness.

3 THE COURT: Why can't you wait and take
4 him on cross when they present him?

5 MR. KRUMHOLZ: Because I want to put him
6 on in my case in chief and I think he's going to prove
7 up my case in chief.

8 MR. NEIER: Your Honor, he's a retained
9 expert by Marathon.

10 THE COURT: How do you put their expert
11 on as your case in chief?

12 MR. KRUMHOLZ: I think that I have every
13 right to. If we had designation under the rule I would
14 have designated in part based upon the admissions I have
15 already gotten. And I have every right to --

16 MR. NEIER: They're not retaining him
17 so -- we haven't offered him yet. When we offer him,
18 they can cross-examine him. That's the way it works
19 with experts.

20 MR. KRUMHOLZ: That's not true. It
21 sometimes works that way but I have called him on our
22 case in chief and I would like to do so, Your Honor.

23 MR. NEIER: They do not, Your Honor.

24 MR. KRUMHOLZ: What rule is that?

25 MR. NEIER: They're going to have a

1 chance to cross-examine.

2 THE COURT: I don't know the answer. Do
3 we have another witness? I'll have to actually read
4 some evidence to figure this out. Do you have another
5 witness? Is this your last witness?

6 MR. KRUMHOLZ: This is our last witness.

7 THE COURT: Were you going to call him as
8 your first witness?

9 MR. NEIER: We weren't, but if that --

10 THE COURT: Can't we just let them call
11 him on direct and then you take him?

12 MR. NEIER: You know, I think it's
13 probably proper that we take a witness -- if we're going
14 to start our case, we'll call him in our case and they
15 can cross-examine him. We'll start in the order that we
16 choose.

17 THE COURT: Because all he's going to do
18 is put on his proffer and then you can cross him.

19 MR. KRUMHOLZ: Your Honor, I'll live with
20 whatever your ruling is. I believe I have every right
21 to call him in my case in chief but it's up to you.

22 THE COURT: I don't think it matters.
23 Yes, sir?

24 MR. SHIELDS: Well, it matters to us.
25 But in response to your question about does the

1 Indenture Trustee have other witnesses, we do wish to
2 call as an adverse witness Delona Moore and we'll be
3 getting a subpoena out.

4 MR. KRUMHOLZ: And we obviously have some
5 deposition testimony that we have designated.

6 THE COURT: Okay. Let's call your first
7 witness then and let's get them.

8 MR. NEIER: Your Honor, we would call
9 Dr. Barrett, Your Honor.

10 THE COURT: I thought we were going to
11 call that guy, first.

12 MR. NEIER: No. We will put the
13 witnesses on in the order that we decide to put them on.

14 THE COURT: Then it does make a
15 difference, I guess, in a sense.

16 MR. NEIER: They can't make us choose.

17 MR. KRUMHOLZ: I'm not asking him to
18 choose.

19 MR. NEIER: Yes, they are, Your Honor.

20 THE COURT: I was asking you to choose.

21 MR. NEIER: Well, we would choose to put
22 on Dr. Barrett. He is not a fact witness. He's our
23 retained expert. He should be called when we decide to
24 call him. That's the way it works. There's no basis
25 for another side to call --

1 THE COURT: Okay. Then I'll let them
2 call him. Go ahead.

3 MR. KRUMHOLZ: Richard LaMont.

4 MR. FIERO: Your Honor, can we at least
5 insist that he finish with the witness tonight?

6 THE COURT: I would certainly hope so.

7 MR. FIERO: And this not be broken up.

8 MR. KRUMHOLZ: Your Honor, I'm not going
9 to finish in an hour.

10 THE COURT: With him?

11 MR. KRUMHOLZ: With him. With the
12 valuation expert from the other side, no, I'm not. If
13 you want to take him out of order and I'll be allowed to
14 take him on my -- still in my case in chief tomorrow.

15 THE COURT: Of course you can take him in
16 your case in chief. I mean, if you -- if you want to
17 ask questions of him after they've asked him. It does
18 seem as though this is their witness and they paid him
19 and if you wanted to hire some other expert you could do
20 it.

21 MR. KRUMHOLZ: Your Honor --

22 MR. SHIELDS: It's like calling an
23 adverse witness, Your Honor, we have every right to do
24 it.

25 MR. KRUMHOLZ: In my world this happens

1 many times.

2 MR. NEIER: It does not.

3 MR. KRUMHOLZ: It does.

4 MR. SCHWARTZ: This is really just
5 another attempt to get two bites with Mr. LaMont like
6 they did with Mr. Dean. It was okay with Mr. Dean, he's
7 a fact witness but you can't do that with an expert.
8 They're going to try to cross-examine him now on their
9 case and then when we put him on in our case they're
10 going to go back and try and ask him more questions.
11 They've already told us they want to do that with
12 Mr. Dean. It's just not appropriate, particularly with
13 an expert.

14 We will call Mr. LaMont, he's not going
15 anywhere. We will put him on the stand tomorrow. And
16 then can examine him tomorrow and ask him the very
17 questions he wants to ask him now. We should not be
18 required to put witnesses on in the order that they want
19 us to put them on and they should not be allowed to call
20 our experts in their case in chief. It's inappropriate.

21 MR. KRUMHOLZ: Right, one rule, one case.

22 THE COURT: Does somebody have a case on
23 whether you can call somebody else's expert?

24 MR. NEIER: I think it's their
25 requirement to produce it, Your Honor.

1 THE COURT: Does anybody have anything on
2 that?

3 MR. FROMME: Your Honor, Eric Fromme on
4 behalf of Gibson Dunn and Crutcher on behalf of Scotia
5 Pacific. I hate to interject but I will say that the
6 Indenture Trustee during the confirmation trial
7 threatened that on Scopac. We did do research on it and
8 they do have a right to call expert witnesses adverse in
9 their case in chief. That was the research that we
10 found. I don't have a case. I would have to look it
11 up, but I represent to the Court that that was the
12 research that we found. And we were not happy about
13 that either.

14 MR. SHIELDS: The most famous case in
15 jurisprudence on this case.

16 THE COURT: Famous case first.

17 MR. SHIELDS: Is the U.S. Government
18 versus IBM where they tried to bust them up in the '80s.
19 The U.S. Government subpoenaed IBM's expert witness, put
20 him on as part of their case. They had to pay, they had
21 to tender a fee because IBM didn't want to do it but it
22 goes back to at least the '80s.

23 MR. NEIER: Your Honor, we'll make him
24 our first witness, all right?

25 THE COURT: All right. Then that way

1 they can put his direct on, you can cross him and
2 everything works out.

3 MR. KRUMHOLZ: I would like to put him on
4 as my case in chief.

5 THE COURT: Well, it is in your case in
6 chief. I'm just going to let them put the direct on
7 first. Let's go on. That's a reasonable compromise.
8 Even though you-all haven't agreed to it, I have. Let's
9 go ahead. Just call -- so they're calling -- will you
10 raise your right hand to be sworn.

11 RICHARD LaMONT,
12 having been first duly sworn, testified as follows:

13 THE COURT: All right. You get ten
14 minutes.

15 MR. SCHWARTZ: Ten minutes. Your Honor,
16 Steven Schwartz on behalf of Marathon.

17 DIRECT EXAMINATION

18 BY MR. SCHWARTZ:

19 Q. Good evening, I guess, Mr. LaMont. Do you
20 have your proffer in front of you?

21 A. Not that I see.

22 Q. We'll get it. Let me just start by asking you
23 a few background questions. Since you already
24 testified, we won't go through all your qualifications.
25 But can you just remind the Court over the past five

1 years how many appraisals of timberlands you have done?

2 A. I probably have done over 100 in the last five
3 years, large corporate timberlands in the Northwest,
4 Oregon, Washington, Idaho, California.

5 Q. I'm sorry, I was going to ask you next but you
6 beat me to it. What states have you done those?

7 A. Oregon, Washington, California and Idaho.

8 Q. And in terms of the acreage of those
9 timberlands, what has been the range?

10 A. A typical property is probably 85 to 150,000
11 acres. I do some small 35 to 40,000 acre properties but
12 a lot of the properties are in excess of 200,000 acres.

13 Q. And in appraising timberlands, is it important
14 to know the acreage and does that affect how you
15 appraise the timberlands?

16 A. Acreage is one component. And when you're
17 looking for comps and doing other aspects of the
18 appraisal, though, it's not, you know, the element that
19 you would look at in appraisal, but definitely looking
20 at comps and other aspects.

21 Q. As part of your work as an appraiser of
22 timberlands, do you sometimes do updates of appraisals?

23 A. Yes, I actually do many routine portfolio
24 appraisals which require annual updates where you look
25 at market conditions and volume -- you know, volumetric

1 changes to the property and makeup dates.

2 Q. Just so I and the Court under what you're
3 talking about, that would be a situation where you've
4 already done an appraisal and then it's a year later and
5 you're not doing a whole new appraisal but you're
6 updating to see what changes have occurred in that year.
7 Is that what you're talking about?

8 A. Correct. You typically do a full appraisal,
9 you build the DCF models and all those components in
10 your full appraisal and when you do the update
11 appraisal, you update the different parameters of your
12 DCF model or the market condition changes and volumetric
13 changes that might have occurred.

14 Q. And about how many of those do you do in a
15 typical year?

16 A. 15, 10 to 15 in a year.

17 Q. Of timberlands?

18 A. Of timberlands.

19 Q. Now, have you formed an opinion as to whether
20 the value of the timberlands -- and again, when I say
21 timberlands, I mean both the commercial timberlands and
22 the MMCAs, understood?

23 A. Yes.

24 Q. Okay. Have you formed an opinion as to
25 whether the value of the timberlands was higher or lower

1 on the petition date than it is currently?

2 A. The value was lower on the petition date.

3 Q. Okay. And have you done any analysis to
4 determine the approximate amount by which the
5 timberlands has increased in value since the -- since
6 the petition date?

7 A. Yes, I have analyzed the primary drivers of
8 value. And I have determined that the value was \$65
9 million lower as of the petition date.

10 Q. Now, in coming to that opinion, did you use
11 the same methodology that you used with respect to your
12 opinion as to the value at confirmation?

13 A. Yes, I used the same methodology that I did in
14 my April report.

15 Q. And that's the discounted cash flow?

16 A. Primary value component was the discounted
17 cash flow model.

18 Q. Now, you didn't do another sales comparison?

19 A. No, I did not.

20 Q. And why is that?

21 A. There really wasn't time to do complete
22 research for sales comparison and complete a full report
23 in the time given.

24 Q. Okay. Now, you mentioned the primary drivers
25 of value. Can you just list those for me and we can go

1 through each one.

2 A. Primary drivers would be your prices for your
3 logs, your volume -- excuse me, prices, your discount
4 rate, and your volume for harvest.

5 Q. Of those, which is the most significant in
6 terms of a change in one of those will have the greatest
7 effect on the value?

8 A. Typically the discount rate is the largest
9 change in value.

10 Q. Okay. And what discount rate did you use in
11 your opinion -- in formulating your opinion with respect
12 to the valuations at confirmation?

13 A. At the time of confirmation, I used a 7
14 percent discount rate for my DCF calculations based on
15 my comparables.

16 Q. And what discount rate did you use in coming
17 up with your opinion as to the value as of the petition
18 date?

19 A. I used an 8 percent discount rate based on
20 petition date.

21 Q. Now, why did you use a 1 percent higher rate
22 at the petition date than as of confirmation?

23 A. The timberland market has been very
24 competitive and the discount rates that have been being
25 used have been dropping and I looked at the comparables

1 as of petition date and that's how I determined that
2 rate. I looked at the comparables as of the April date
3 and derived the difference and they had been falling
4 over that time period.

5 Q. And as part of your normal work as an
6 appraiser, do you follow the trends of discount rates
7 for timberland problems?

8 A. Absolutely. It's a key driver. And you
9 follow all the comps and you try to derive what those
10 rates are, you talk to other investors, other appraisers
11 to determine what they see changes in rates so that you
12 stay very current so you know what to use in your
13 current appraisal work.

14 Q. In doing your work in this case, have you
15 talked to other experts in the field to get a sense of
16 what they think the changes in the discount rate have
17 been over the past year to two years?

18 A. Yes, I have.

19 Q. And who have you talked to?

20 A. I have talked with Brett Vickery.

21 Q. And who is he?

22 A. Brett Vickery is a principal in the Sewall
23 company. He's, I think, their chief appraiser. And we
24 discussed a series of comparable sales that have gone
25 on, particularly the Timber Star transaction in the U.S.

1 South. It was a transaction where they had sold
2 property.

3 MR. KRUMHOLZ: Your Honor, I object to
4 the portion that it's based upon hearsay.

5 MR. SCHWARTZ: Your Honor, he's an
6 expert.

7 THE COURT: Overruled.

8 MR. SCHWARTZ: Thank you.

9 A. It was a transaction that occurred in March of
10 '06 and they sold a property in Texas and the U.S. South
11 for \$1.1 million. They just recently sold that property
12 in, I believe, February of '08 for \$1.7 million. These
13 properties have been managed and have been managed the
14 same prior and after -- before and after the sale. And
15 the primary driver as log prices have declined in the
16 South also was the change in discount rate. And we
17 noticed that the discount rate previously was probably 6
18 percent --

19 MR. KRUMHOLZ: Your Honor, I want to
20 reurge my objection because this has much to do -- I
21 mean, this is all hearsay.

22 THE COURT: Okay. He gets his ten
23 minutes. You'll get to cross-examine him. He gets ten
24 minutes with his expert. So finish up.

25 MR. SCHWARTZ: I will.

1 MR. KRUMHOLZ: It's all hearsay, Your
2 Honor.

3 A. I have direct knowledge of these sales. I
4 calculated --

5 THE COURT: You don't have a question
6 now, so go ahead.

7 Q. (By Mr. Schwartz) Other than that
8 conversation, have you talked to any other experts?

9 A. Yes, I have. I have talked to Vick Musselman
10 and I discussed discount rates in the region of
11 particularly Oregon and Washington.

12 Q. And who is Vick Musselman?

13 A. Vick Musselman is a timberland appraiser who
14 has been timberland appraising for probably 30 years in
15 Oregon and Washington and the Northwest.

16 Q. And did he agree with you that discount rates
17 have been trending down over the last years?

18 A. Yes.

19 MR. KRUMHOLZ: I object, Your Honor, as
20 calling for hearsay again.

21 MR. SCHWARTZ: Your Honor, he's just
22 wasting my ten minutes.

23 MR. KRUMHOLZ: I'm wasting your ten
24 minutes?

25 MR. SCHWARTZ: An expert is allowed to

1 rely on other experts.

2 MR. KRUMHOLZ: He can rely on it, he just
3 can't testify about it.

4 THE COURT: I will allow the witness to
5 answer the question. Let's move on. Your ten minutes
6 are almost up.

7 A. Vick and I discussed discount rates and the
8 continued fall in discount rates --

9 MR. KRUMHOLZ: I think the question was
10 just whether he agreed with it.

11 MR. SCHWARTZ: That was the question.

12 MR. KRUMHOLZ: Objection, nonresponsive.

13 THE COURT: Be responsive to the
14 question.

15 Q. (By Mr. Schwartz) Do you agree that the log
16 prices have declined generally since the petition date?

17 A. Yes, I do.

18 Q. And have you done an analysis as to what
19 impact that has had on the value of the timberlands?

20 A. Yes, I have.

21 Q. And what was your conclusion?

22 A. All things being equal, the change in log
23 prices has affected the value of about -- dropping --
24 excuse me. Increasing the value at petition date by \$10
25 million.

1 Q. And just to go back to discount rate, what was
2 the magnitude of the impact of the discount rate on the
3 valuation?

4 A. The discount rate was \$60 million.

5 Q. And the opposite?

6 A. In the opposite, lowering the value as of the
7 petition date, \$60 million.

8 Q. So the discount rate changed lower than \$60
9 million and the price changed to increase it \$10
10 million?

11 A. Correct.

12 Q. For a net of \$50 million negative?

13 A. Correct, lower at petition date.

14 Q. And just to finish up, what other factors led
15 to your conclusion that it's not \$50 million but it's
16 \$65 million decrease?

17 A. The other components of that are the
18 restrictions that were in place at the time of the
19 petition on the Bear-Mattole and the Upper Eel. And
20 also the volumetric changes that have occurred since
21 1/1/07 to the 1/1/08 inventory on the property.

22 Q. Now, you reviewed Mr. Fleming's proffer,
23 correct?

24 A. Yes, I have.

25 Q. And at the end of his proffer he had a little

1 section where he had done an analysis, used some of your
2 numbers but not all of them. Do you recall it?

3 MR. KRUMHOLZ: I object, his ten minutes
4 is up and he is going on to Mr. Fleming. And this is
5 exactly what he objected to in connection to
6 Mr. Shields.

7 MR. SCHWARTZ: Your Honor, I gave
8 everybody a latitude for a minute or two. I think I'm
9 up right at ten minutes and two minutes of it was taken
10 up by objections.

11 THE COURT: Okay. So what's your
12 question? Go ahead.

13 Q. (By Mr. Schwartz) My question was: Are you
14 familiar with what Mr. Fleming said about your approach
15 in his proffer?

16 A. Yes, I am.

17 Q. And was the assumptions used by Mr. Fleming
18 your numbers?

19 A. No. They were hypotheticals of a very
20 inflated harvest rates that he plugged into his
21 hypothetical.

22 Q. And if you used all of Mr. Fleming's numbers
23 but just went back to the harvest rate that the company
24 used \$74 million board feet, what value would you come
25 up with for the timberlands?

1 A. If you just put the harvest level that Scopac
2 is currently using at 74 to 75 million feet, the value
3 would have been \$436 million.

4 Q. And my last question on direct Mr. LaMont --
5 two questions. You deal with appraisers all the time of
6 timberlands, right?

7 A. Absolutely.

8 Q. Have you ever heard of an appraiser of
9 timberlands using the BAA corporate bond rate as their
10 benchmark for coming up with a discount rate for
11 timberlands?

12 A. In my 20 years of appraising, I have never
13 seen an appraiser use the BAA bond rate to determine a
14 discount rate.

15 Q. Is that next to none?

16 A. Yes.

17 MR. SCHWARTZ: I have no further
18 questions at this time.

19 THE COURT: All right.

20 MR. SCHWARTZ: Your Honor, could we have
21 admitted Mr. LaMont's proffer? If it needs to be
22 authenticated we can, but I don't think there an
23 objection.

24 THE COURT: Is there an objection? We're
25 going to do them all but everyone else wanted theirs in.

1 I mean, we're going to do them all.

2 MR. KRUMHOLZ: I mean, I wanted it in.

3 THE COURT: As far as I'm concerned the
4 proffer is in but we'll do it all in the morning.

5 MR. SCHWARTZ: Thank you, Your Honor.

6 MR. KRUMHOLZ: Your Honor, I was looking
7 through my notes, given the time, and I frankly have
8 about 15 minutes that I can cover and then I think it
9 would be a good time for a break.

10 THE COURT: Well, let's see where we are.
11 Do your 15 minutes.

12 CROSS-EXAMINATION

13 BY MR. KRUMHOLZ:

14 Q. Mr. LaMont, you're not a registered
15 professional forester like Mr. Fleming, right?

16 A. Not in the state of California, no.

17 Q. Okay. And California is unique. You've told
18 us about that, right?

19 A. Yes.

20 Q. And in fact, as part of becoming a registered
21 professional forester, we throw that term around but
22 that's a very significant accomplishment in the state of
23 California, is it not?

24 A. Yes, it is.

25 Q. It's important because in the state of

1 California, they have redwood forests, as Mr. Pascuzzi
2 told us, that are obviously very important to that state
3 and they want to make sure you're qualified when you do
4 work in connection with those types of forest lands,
5 right?

6 A. Particularly in the preparation of harvest
7 plans.

8 Q. And to pass that comprehensive examination, do
9 you know who it's administered by, by the way?

10 A. There's a government agency that regulates
11 those and its education.

12 Q. And there's a comprehensive examination that
13 you actually have to pass to become one, right?

14 A. Correct.

15 Q. And it's called the Professional Foresters
16 Examining Committee that administers it; is that right?

17 A. Yes.

18 Q. And they never administered to you that exam,
19 correct?

20 A. No.

21 Q. You never scored 75 percent or greater on that
22 exam?

23 A. No.

24 Q. And to pass that exam, you have to learn a lot
25 about things that actually would be applicable to this

1 case, right?

2 A. I'm not sure --

3 Q. Do you have any idea?

4 A. -- what the context of your question is.

5 Q. Well, let's talk about it a little bit. For
6 example, environmental regulations that you think are
7 important in this case, those are very significant
8 aspects of that examination?

9 A. Yes.

10 Q. For example, HCPs and things of that nature?

11 A. I'm not sure HCPs are there.

12 Q. You're not aware?

13 A. I know the timberland -- THPs but I'm not sure
14 if they go into HCPs.

15 Q. But you are aware about the THPs, the
16 harvesting plans?

17 A. Yes.

18 Q. And how you go about doing that and how you
19 get them approved and what's appropriate and what's not?

20 A. Correct.

21 Q. And you haven't passed any exam in connection
22 with any of that activity?

23 A. No.

24 Q. Okay. And I just want to make sure that I
25 heard this correctly in your deposition. You have not

1 once in your career -- and how long have you been
2 working in timberlands or appraising things of this
3 nature?

4 A. I have been -- I graduated in forestry in
5 1982.

6 Q. Not once have you ever performed an evaluation
7 or appraisal of any redwood timberland; is that correct?

8 A. No, that's not --

9 Q. Before this case?

10 A. That's not correct.

11 Q. Would you put up slide 1, please.

12 MR. KRUMHOLZ: May I approach, Your
13 Honor?

14 THE COURT: You may.

15 Q. (By Mr. Krumholz) We'll do this by hand.
16 Mr. LaMont, at the time of your deposition, do you
17 recall I actually asked you that question?

18 A. I believe you asked me questions regarding
19 that subject, yes.

20 Q. And in fact, we spent some time on the subject
21 of redwoods and your experience in that regard, not only
22 with respect to appraisals but other respects as well,
23 do you recall that?

24 A. Yes.

25 Q. I asked you straight up at line 7 of page 207

1 "have you ever prepared an appraisal of redwood
2 timberlands prior to this case?" And your answer was
3 "no." Correct?

4 A. Correct.

5 Q. Okay. And you can't identify any property in
6 Humboldt County that you have ever appraised; is that
7 right?

8 A. As I --

9 Q. Outside of this case.

10 A. Outside of this case, I worked on the redwood
11 2 national park condemnation, which was a valuation
12 project.

13 Q. You can't identify any property in Humboldt
14 County that you have appraised, true?

15 A. I appraised -- I didn't appraise, but I worked
16 as a evaluation consultant for the Redwood National Park
17 condemnation case.

18 Q. Did you say you didn't do an appraisal?

19 A. I did not do an appraisal of it.

20 Q. I just want to make sure that it's not
21 qualified like it wasn't qualified in your deposition.
22 I asked you just a few lines down, "you can't identify
23 any property in Humboldt County that you have
24 appraised?" That was the question, right?

25 A. That was the question.

1 Q. You didn't say you didn't understand it at the
2 time, right?

3 A. No.

4 Q. I just asked you that question a few days ago,
5 right?

6 A. Correct.

7 Q. And what was your answer?

8 A. No.

9 Q. No. Outside of this case. No. Is that
10 correct? Yes. Did I read that correctly?

11 A. Yes, you did.

12 Q. Okay. In fact, when you were originally hired
13 to advise Marathon regarding how the debtors' property
14 should be operated -- when you originally were hired,
15 you were hired in connection with how these properties
16 should be operated, not as an appraiser at all, right?

17 A. Our original role was as an advisor and my
18 role in that was as a timberland consultant.

19 Q. Not as an appraiser?

20 A. Not as an appraiser.

21 Q. Okay. But at the end of 2007, somehow your
22 assignment changed and for the very first time you were
23 asked to do an appraisal of a redwood timberland, right?

24 A. Correct.

25 Q. And that was about the same time that

1 Mendocino joined the team; is that right?

2 A. No. I don't think so.

3 Q. You don't believe that December or January was
4 about the same time that Mendocino joined the team?

5 A. Do you want the timeline from me?

6 Q. No. I want you to answer my question.

7 A. My recollection is they joined in January.

8 Q. Okay. Fair enough. That's what I meant by
9 "around that time."

10 A. Well, Mr. Neier contacted me in December
11 regarding an appraisal.

12 Q. And this is the first time you've ever been
13 asked to actually testify as an appraiser, right?

14 A. Correct.

15 Q. Is that true?

16 A. Correct.

17 Q. You never have been qualified in court to
18 issue any sort of appraisal opinion before this case; is
19 that correct?

20 A. That is correct.

21 Q. And in November of 2007, there was a completed
22 business plan estimating that Scopac could harvest 78
23 million board feet?

24 A. That is correct.

25 Q. And you contributed to that, correct?

1 A. Yes.

2 Q. And that was also before Mendocino provided
3 its models to you, correct?

4 A. Can you repeat that question again?

5 Q. Well, at some point Mendocino actually
6 provided its modeling to you, correct, its business plan
7 model?

8 A. Yes.

9 Q. And before you ever saw what Mendocino now
10 suggests should be harvested, you contributed to
11 evaluation to a business plan that was going to harvest
12 78 million board feet?

13 A. Yes, I prepared some forecasts in November of
14 that year.

15 Q. And that business plan presumed that there was
16 going to be a harvest of 78 million board feet?

17 A. Correct.

18 Q. In the first year, right?

19 A. Yeah. It was an even flow at 78 million feet.

20 Q. But you came up with a \$430 million valuation
21 based upon 60 million board feet starting place?

22 A. Again, I did three scenarios. One was a 65
23 with a step up and there was also a 74 million foot
24 harvest level even flow.

25 Q. But the number you came up for your valuation

1 was \$430 million, right?

2 A. Correct.

3 Q. And the numbers that you input into that
4 valuation projection as a starting place was 60 million
5 board feet, not 78 million board feet, true?

6 A. True.

7 Q. Okay. And that's what led to the \$430 million
8 value, correct?

9 A. I had subsequent --

10 Q. Correct? Answer my question.

11 A. Can you restate the question then, please.

12 Q. The number that you put into your projection
13 that led to the \$430 million valuation was not 78
14 million board feet as a starting place for the harvest
15 rate, right?

16 A. No.

17 Q. That's not right?

18 A. Excuse me. I think we're answering the same
19 question. But I did not use the 78 million for the
20 harvest level.

21 Q. Okay. Like you had when you contributed to it
22 before Mendocino was involved. You didn't do that
23 again. Instead, you used a 60 million board feet
24 starting place, right?

25 A. No. I looked at three alternatives.

1 Q. I'm talking about with respect to the one that
2 came up with this \$430 million number. There's only one
3 that came up with that number, right?

4 A. Correct.

5 Q. The one that came up with that number, you
6 started at a 60 million board foot starting place,
7 right? Is there a reason why you're reluctant to say
8 yes? It's true, isn't it?

9 MR. SCHWARTZ: Your Honor, he's badgering
10 the witness.

11 MR. KRUMHOLZ: I just wanted an answer.

12 MR. SCHWARTZ: He's asked him a question
13 and won't let him answer.

14 Q. (By Mr. Krumholz) Is the answer yes?

15 A. The primary weight was given --

16 Q. So the answer is yes to my question about
17 which one equalled \$430 million?

18 MR. SCHWARTZ: Let him answer.

19 THE COURT: Hold it. Let's just ask
20 simple questions. Now, start over with your question.
21 What is it?

22 Q. (By Mr. Krumholz) You had one run back in
23 April of '08 that ended with the \$430 million value that
24 you suggested to this Court was appropriate for this
25 property, correct?

1 A. My run one used a 60 and 65 step up harvest
2 rate and the value was \$430 million.

3 Q. And that's exactly the number you told this
4 Court that the timberlands were worth, right?

5 A. Correct.

6 Q. And just months earlier, three or four months
7 earlier, you contributed to a business plan that used a
8 78 million board foot harvest rate, correct?

9 A. Correct.

10 Q. And you chose not to use that in any of your
11 models.

12 A. Because we had --

13 Q. Is that true?

14 A. Yes, it is true.

15 Q. Okay. That's all my question was.

16 A. Because I talked to Dr. Barrett --

17 MR. KRUMHOLZ: I object to nonresponsive.

18 THE COURT: I know you want to answer
19 your question. You only get to answer his question.
20 They'll come back out and give you the chance to answer
21 if they think it's important.

22 Q. (By Mr. Krumholz) Other than your
23 undergraduate degree, you have no additional higher
24 education, correct?

25 A. I have about 25 hours of graduate work from

1 Oregon State University.

2 Q. But you have no graduate degree; is that fair?

3 A. Correct.

4 Q. And you didn't attend any form -- you did
5 attend graduate school for a period of time?

6 A. I took hours. I worked at the university and
7 I took graduate level classes while I worked at the
8 university.

9 Q. You were never admitted as a student to that
10 institution?

11 A. Not in a graduate program, no.

12 Q. Okay. And therefore, that is the reason why
13 you answered previously that you never attended graduate
14 school?

15 A. Correct.

16 Q. And you were never an employee of a
17 timberland; is that right?

18 A. No.

19 Q. That's not right?

20 A. Yes, I -- ask the question again. Excuse me.

21 Q. You have never been an employee of a
22 timberland, correct?

23 A. Correct.

24 Q. Okay. You've never served as an officer in a
25 timberland company, true?

1 A. True.

2 Q. You've never served as director of a
3 timberland company, correct?

4 A. Correct.

5 Q. Never served as a person responsible for
6 operating a timberland?

7 A. Correct.

8 Q. Have you?

9 A. I have not. I'm getting confused with the
10 yes's and no's.

11 Q. I'm sorry. I'll go slow.

12 A. Thank you.

13 Q. Have you ever served as an employee or officer
14 of a timberland company responsible for setting harvest
15 rates?

16 A. No, I have not.

17 Q. Have you ever served as an officer, an
18 employee of a timberland company responsible for setting
19 or projecting costs associated with harvesting?

20 A. No, I have not.

21 Q. Have you ever served as an officer, employee
22 of a timberland company responsible for dealing with
23 environmental regulations regulating the timberland
24 company?

25 A. No, I have not.

1 Q. Or as an employer or officer of a timberland
2 company responsible for determining harvesting costs?

3 A. No, I have not.

4 Q. Or as an employer or officer of a timberland
5 company responsible for determining appropriate discount
6 rates for value purposes?

7 A. No, I have not.

8 Q. Or an employer or officer of a timberland
9 company for projecting prices likely able to sell timber
10 in a foreign marketplace?

11 A. No, I have not.

12 Q. Or managed or operated a timberland under an
13 HCP?

14 A. No, I have not.

15 Q. Have you ever actually purchased or sold logs
16 or timber?

17 A. No, I have not.

18 Q. And as I understand it, you're not asked to
19 provide an opinion of the value of the Scopac
20 timberlands as of the petition date?

21 A. That's correct.

22 Q. Okay. Or for that matter, any opinion of
23 value of the timberlands as of the petition date; is
24 that correct?

25 A. I was asked to provide opinions but not a

1 specific opinion of value as of the petition date.

2 Q. And you have not formed any specific opinion
3 of value as of the petition date?

4 A. No, I have not.

5 Q. Is that correct?

6 A. That is correct.

7 Q. Okay. And despite the fact that you
8 believe -- first of all, you do believe that a full
9 valuation which you have not performed in this
10 timberland as of January 18, 2007, true? You have
11 not -- you have not performed a full valuation of the
12 timberland as of January 8, 2007, true?

13 A. Correct. True.

14 Q. So as a result -- well, and you've admitted, I
15 believe, in your deposition -- I assume you still
16 agree -- that it would have been more reliable to do a
17 full evaluation of the timberlands as of the petition
18 date rather than doing this piecemeal sort of evaluation
19 that you've done per counsel. It would have been more
20 reliable, correct?

21 A. Correct.

22 MR. KRUMHOLZ: Your Honor, this is
23 actually a good time, a good place to break.

24 THE COURT: I got 30 more minutes.

25 MR. KRUMHOLZ: Do you want me to keep

1 going?

2 THE COURT: Yeah.

3 Q. (By Mr. Krumholz) Now, it's your opinion that
4 the value of the timberlands has gone up despite
5 decreased log prices; is that right?

6 A. Yes.

7 Q. And specifically, you opine that the trees
8 grew more and the trees were harvested in the
9 timberlands during the bankruptcy period; is that right?

10 A. That's one of the components.

11 Q. And you also said that there's been some sort
12 of decrease in the discount rate during the bankruptcy
13 period?

14 A. That is also true.

15 Q. And that these factors make up for any
16 decrease in log prices?

17 A. Yes, because log price decreases are temporal.

18 Q. And you've also performed a growth analysis.
19 That is, you've analyzed how much growth there's been in
20 the timberlands as compared to the amount of timber
21 that's been cut in the timberlands?

22 A. Correct.

23 Q. And in doing that analysis, as I understand
24 it, you reviewed Mr. Barrett's March 2008 affidavit,
25 correct? And we talked about that some today?

1 A. Yes.

2 Q. Mr. Barrett provided an affidavit to the Court
3 in which he talked about growth in the forest in 2007,
4 right?

5 A. Correct.

6 Q. And you reviewed that affidavit in forming
7 some of your opinions in this -- in this case?

8 A. Yes, I have.

9 Q. And forming an opinion as to whether there's
10 any increase of value at all as to the timberlands in
11 2007; is that right?

12 A. Yes.

13 Q. And that wasn't the first time that you looked
14 at Mr. Barrett's affidavit; is that right, when you
15 formed those opinions?

16 A. I've looked at many of Dr. Barrett's
17 affidavits, so I probably have seen it before.

18 Q. You actually reviewed Dr. Barrett's affidavit
19 at or about the time you filed it in March of 2008; is
20 that correct?

21 A. I probably did see it in March because I know
22 his affidavit was in March and I saw most of the
23 proffers and statements at that time.

24 Q. We'll get to that in a few minutes, but I want
25 to turn our attention for the moment just to log prices.

1 Assume with me that as of January 2007 the appropriate
2 discount rate was the same as in your 2008 valuation.
3 That is, 7 percent. Your April 30, 2008 valuation.

4 A. Hypothetically, yes.

5 Q. And that all of your assumptions other than
6 price are the same as in your 2008, April 30, 2008
7 models, okay?

8 A. Okay.

9 Q. Except over the course of the bankruptcy
10 period prices, log prices lowered by at least 10 to 15
11 percent. Are you with me?

12 A. I'm following.

13 Q. If that were true, there would be a
14 significant drop in value from the petition date to now,
15 true?

16 A. I estimate a \$10 million change in value.

17 Q. Is that based upon a 10 or 15 percent
18 reduction?

19 A. That's based on the 10 percent reduction in
20 '08 with a return to trend in 2010.

21 Q. Okay. But that's not the analysis you
22 performed back on April 30, 2008, right?

23 A. My April work was based on a 2008 and so the
24 drop was in the first year.

25 Q. Now, you do agree that the cause of this drop,

1 these drop in log prices was a general economic
2 slowdown, right?

3 A. That was one of the major factors, yes.

4 Q. That was the cause according to you in your
5 testimony, right?

6 A. Yeah. I mean, the housing slowdown has been
7 one of the major reasons for lack of demand and lower
8 log prices.

9 Q. And it was particularly critical -- and you
10 expected my next question. The housing crisis was a big
11 contributor to that in your opinion, correct?

12 A. Yes.

13 Q. And it depressed prices uniformly across all
14 forest products?

15 A. Generally, yes.

16 Q. And it has especially hit products like
17 redwood and specifically Doug Fir?

18 A. Both products have been affected, yes.

19 Q. And of course, redwood is the primary product
20 or value indicator for this forest, right?

21 A. Yes.

22 Q. And anything left over is Doug Fir really?

23 A. Primarily, yes.

24 Q. Now, according to you, if Mr. Fleming as of
25 his October 1, 2007 valuation had plugged in your

1 pricing assumptions, it would have reduced the value of
2 the -- of the timberland \$100 to \$150 million as of
3 April 30, 2008, right?

4 A. Based on his faulty methods, yes.

5 Q. Just to be clear, the Court, as I understand
6 it -- and let's assume I'm right for the moment --
7 thought he had faulty methodology because he stopped in
8 October. Okay. But if he corrected that and moved
9 forward to April 30 of 2008 and the Court felt like that
10 methodology was correct and reliable, then that would
11 indicate just between that period \$100 to \$150 million
12 of lost value in that time frame, true?

13 MR. SCHWARTZ: Your Honor, I object. I
14 think he mischaracterized your findings as suggesting
15 that was the only flaw you found.

16 MR. KRUMHOLZ: Your Honor, I asked a
17 hypothetical.

18 THE COURT: First of all, he can ask
19 whatever hypothetical he wants to.

20 MR. SCHWARTZ: But he didn't ask a
21 hypothetical.

22 MR. KRUMHOLZ: Yes, I did.

23 THE COURT: We don't have to worry that
24 I'm confused. I know what my findings are and his
25 question won't confuse me. So if he wants to ask a

1 hypothetical question, he's entitled to ask it.

2 MR. SCHWARTZ: Thank you.

3 Q. (By Mr. Krumholz) You can answer.

4 A. Can you just summarize quickly what you were
5 asking again because I think I'm losing the thread here.

6 Q. If you assume that the method -- you mentioned
7 some problems with Mr. Fleming's methodology that the
8 Court found. That's what you mentioned. So I'm asking
9 you to assume that the only flaw in his methodology that
10 concerned the Court was stopping his valuation at
11 October 1, 2007. If that were true and you plugged in
12 pricing and carried his methodology forward until April
13 30 of 2008, according to your own testimony and your own
14 analysis, that would lead to a decrease in the value of
15 the timberlands from October 1, 2007 to April 30, 2008
16 of \$100 to \$150 million.

17 A. Yes, if you plugged in appropriate starting
18 points.

19 Q. In fact, you were proud of that fact, so much
20 so you actually testified about it on direct in the
21 confirmation hearing.

22 A. Correct.

23 Q. And of course, the Court in its findings drew
24 similar conclusions.

25 A. I believe so.

1 Q. You saw in there where they said -- the Court
2 said all other things being equal, if he had used log
3 prices that according to Mr. LaMont were accurate, then
4 of course there would have been a drop of \$100 to \$150
5 million, right?

6 A. Because he had an erroneous starting point.

7 Q. True? Yes?

8 A. True.

9 Q. Okay. And that was back when you were trying
10 to find a lower value, right? That's what you were
11 arguing. That's what these folks in the middle table
12 were arguing at the time, that this timberland had a
13 lower value?

14 A. I was at 430 and Mr. Fleming was at 605, so I
15 think that's true.

16 Q. And so you were really quick to point out that
17 if you had simply changed the methodology to use what
18 you thought were appropriate log prices, you would get a
19 substantially lower value at the end of the bankruptcy
20 period?

21 A. If you changed the starting point.

22 Q. True?

23 A. I didn't say log prices overall.

24 Q. But that's what the Court found, right? You
25 have read the findings?

1 A. Yes.

2 Q. And you agreed with the Court's findings as I
3 understand it.

4 A. Yes.

5 Q. Okay. Now, if hypothetically no one was
6 predicting or expecting a decrease in log prices in
7 January 2007, then a valuation as of that date, you
8 agree, shouldn't have incorporated any decline in log
9 prices?

10 A. In your hypothetical, that's self explanatory,
11 yes.

12 Q. Now, you suggest that you projected a log
13 price decrease. That's what you testified to in the
14 deposition?

15 A. Yes.

16 Q. But the truth is that when I tested you on
17 that and asked you what log prices you used just prior
18 to January of 2007, that is, in December of 2006, your
19 methodology was much different than what you suggested,
20 right?

21 A. I'm not sure what your question is. You can
22 explain it.

23 Q. Fair enough. You performed seven valuations,
24 did you not, in December of 2006?

25 A. Seven valuations?

1 Q. For other clients.

2 A. Yes, I have done other valuations in --

3 Q. You performed seven of them. Do you recall
4 that from your testimony?

5 A. Yes.

6 Q. You read it last night, did you not?

7 A. I recall what you're asking.

8 Q. Did you read your testimony last night?

9 A. I did.

10 Q. Okay. So you remember you testified that in
11 December of 2006 you had seven valuations that you
12 performed, just prior to the petition date?

13 A. Correct.

14 Q. Now, in this case, the one we're here about
15 right now, what you did in your model was discount the
16 prices by 10 percent immediately, right?

17 A. Correct.

18 Q. As of January 18, 2007?

19 A. Because I was using a --

20 Q. Isn't that right?

21 A. I was using a 2007 average.

22 Q. I just want an answer. Yes?

23 A. So I dropped the price to current value.

24 Q. I want an answer. Yes or no?

25 THE COURT: Hold it. Let's don't argue

1 back and forth. You need to answer just his questions,
2 and you need to let him answer the questions, okay?

3 MR. KRUMHOLZ: Your Honor, I'm just going
4 to be careful. I have a right to yes or no questions on
5 cross.

6 THE COURT: You asked me to instruct him.
7 Go ahead.

8 Q. (By Mr. Krumholz) Mr. LaMont, on January 18
9 of 2007, according to your modeling for this hearing,
10 you dropped log prices by 10 percent day one, right?

11 A. To put them to market, yes.

12 Q. And then you trend upward and in some of the
13 modeling it trends back to that starting place a year
14 later, right?

15 A. Back to trend, yes.

16 Q. And then sometimes it has a little bit less of
17 a slope and it trends back to January 18, 2007 prices
18 two years later?

19 A. Correct.

20 Q. Okay. And the truth is is that in none of
21 your December 2006 valuations, those seven that we've
22 talked about, did you do any sort of decline at the
23 outset?

24 MR. SCHWARTZ: Objection, Your Honor, he
25 did not testify he did seven valuations in December of

1 2006. He's mischaracterizing once again.

2 MR. KRUMHOLZ: I don't think. I just
3 asked him and he said he did and we went back and forth.

4 THE COURT: Don't argue. If there's some
5 clarification in here, I guess ask it again. Did you do
6 seven in December?

7 THE WITNESS: Approximately I did, yes.

8 THE COURT: Okay. Go ahead.

9 Q. (By Mr. Krumholz) So in none of those seven
10 did you decrease the log prices by 10 percent day one
11 and then trend back to normal, true?

12 A. True.

13 Q. Instead, what you did was flat line, right?
14 You started at a price and there was no real price
15 increase?

16 A. Correct.

17 Q. Other than for -- in other words, just to
18 bring everybody back to what we talked about so often
19 during the confirmation hearing, it did trend upward but
20 only for inflation?

21 A. Correct.

22 Q. No real price increase, right?

23 A. Correct.

24 Q. And the reason why you chose a completely
25 different model than what you had done with respect to

1 the other seven was because you wanted to find a lower
2 value in January of 2007 just as instructed by these
3 folks right here.

4 A. False.

5 Q. But what we do know is there was not one of
6 those seven that did what you are suggesting you should
7 have done in January?

8 A. Subsequent appraisals I did implement trends
9 as the market deepened and the recession was obvious.

10 Q. That didn't happen until months later, right?

11 A. From December of '06, yes, months later, they
12 did change.

13 Q. April, May, right, of '07? That's the first
14 time you did an evaluation of any sort that did it the
15 way you are suggesting you should have done it here?

16 A. I have done market trends on other appraisals.

17 Q. That's not what I asked. After December 2006,
18 the first time you did any sort of discounting was
19 months later in April or May of 2007, right?

20 A. It was the spring of '08, so yeah.

21 Q. It was after March and before June? Can you
22 agree it was April and May?

23 A. Yeah, that was right.

24 Q. Now, I want to talk to you about pricing.

25 We've all heard about SBE, right, and that's a rolling

1 two-year average for pricing that is released by the
2 state of California every six months, right?

3 A. Yes.

4 Q. And it's weighted in favor of the recent
5 months?

6 A. Well, it's a backwards looking trend so I
7 don't know if it's weighted to the recent months. I'm
8 not sure what that means.

9 Q. Let's look at your testimony. You testified
10 at trial that it was weighted more in recent months. Do
11 you recall that?

12 A. It's backwards looking so you're always
13 lagging behind, so the current quarters -- I mean, the
14 current forecast is not necessarily reflective. I'm not
15 sure what your question is.

16 Q. So you agree that it's weighted more in the
17 recent months or not?

18 A. I don't recall.

19 Q. Okay. I don't know that it's worthwhile,
20 but -- I'll go ahead and do it.

21 MR. KRUMHOLZ: May I approach, Your
22 Honor?

23 THE COURT: Sure.

24 Q. (By Mr. Krumholz) You were asked "let's talk
25 first about SBE." Do you see that?

1 MR. SCHWARTZ: Page and line please.

2 Date.

3 MR. KRUMHOLZ: Sorry. 272, line 20.

4 MR. SCHWARTZ: What date?

5 MR. KRUMHOLZ: April 8.

6 Q. (By Mr. Krumholz) It says "let's talk first
7 about SBE." Do you see that?

8 A. Yes, I do.

9 Q. And it says "SBE pricing is a rolling tier
10 average for prices that's released by the state of
11 California about every six months; is that correct?"

12 Answer: "Correct." Question: "And that is weighted in
13 favor of more recent months? In other words, it's a
14 weighted average?" Answer: "It's a backward looking
15 average of the sales, so yes, it's a weighted average."
16 Did I read that correctly?

17 A. Absolutely.

18 Q. And it actually reflects data from every
19 redwood sale in a particular geographic area, correct?

20 A. Yes.

21 Q. And we know that because the State Board of
22 Equalization of California mandates that?

23 A. Correct.

24 Q. And if they don't -- people don't turn it into
25 the state, that pricing data, then they're subject to

1 penalties?

2 A. I assume so.

3 Q. They're subject to fines and reprimands and
4 slaps on the wrist and things of that nature, right?

5 A. They're regulated by the state or tax
6 collection so whatever is appropriate.

7 Q. And for that purpose at least you know they're
8 reliable as a result. In other words, you're collecting
9 a full volume of information about log sales?

10 A. No.

11 Q. From people who are required to do so.

12 A. Because three-quarters of the volume does not
13 transfer at open market prices, it's internal so it
14 doesn't reflect the entire market.

15 Q. But it represents every other aspect of the
16 market?

17 A. It reflects the reported sales.

18 Q. In other words, what you're saying is it
19 doesn't reflect intracompany sales?

20 A. Right. Which represents --

21 Q. In other words, between affiliated entities?

22 A. It represents 75 percent of the volume.

23 Q. It only reflects arm's length transactions
24 with other third-parties? Do you understand the
25 question?

1 A. Yeah, I understand the question.

2 Q. Is the answer yes?

3 A. Yes.

4 Q. Which would even make it more reliable?

5 A. No.

6 Q. You use SBE in your valuations, true?

7 A. I have used it and I compare to it.

8 Q. And you've actually input the SBE into
9 projections, instead of using some other methodology,
10 right?

11 A. It's one data source in developing log prices,
12 yes.

13 Q. No, I understand you consider things and
14 you've said that a lot in your deposition.

15 A. I'm not like Mr. Fleming so --

16 Q. You actually input log prices based upon
17 SBE's, SBE prices into projections and projected them
18 forward?

19 A. Yes.

20 Q. Okay. So you've actually relied on them and
21 specific appraisals in specific valuations?

22 A. Yes.

23 Q. And you've done that many times?

24 A. I wouldn't say many times, but I have done it
25 several times.

1 Q. Okay. Now, SBE's breakout pricing by category
2 of logs; is that right?

3 A. And species, which is important.

4 Q. And they break it out by both size and by
5 quality?

6 A. Size is the primary thing. They just -- they
7 record them. But under 150, 150 to 300 and over 300 are
8 the three brackets. It's a proxy for quality.

9 Q. Okay. So they report it in 300 board foot
10 logs and above, correct?

11 A. Greater than 300.

12 Q. And then 100 to 300?

13 A. 150 to 300.

14 Q. Excuse me. 150. And then less than 150?

15 A. Correct.

16 Q. And it also breaks out by geographic zone,
17 correct?

18 A. Correct.

19 Q. And zone 1 is in Humboldt County, right?

20 A. Yes.

21 Q. And zone 2 is Mendocino County?

22 A. Yeah, I think it's 1 technically is Humboldt
23 and 2 is Mendocino.

24 Q. And there's Del Norte?

25 A. Yes.

1 Q. And those are all three kind of very close
2 together that have had a lot of timberlands; is that
3 correct?

4 A. Yes.

5 Q. And you've never performed a valuation or
6 appraisal before this case of any timberland in any of
7 those counties?

8 A. Correct.

9 Q. I want to talk to you about Pac Rim Wood
10 Market pricing for a moment. And first of all, those
11 are the numbers that you used both in your 2008, April
12 30, 2008 valuation and the various models you prepared
13 in connection with this hearing?

14 A. Correct.

15 Q. In fact, the pack rim prices were the major or
16 primary basis for your appraisal with timberlands?

17 A. Yes, for the redwood prices.

18 Q. And these are voluntarily reported by folks?

19 A. Correct.

20 Q. And you have no idea if even one customer or
21 even one buyer or one seller of logs in Humboldt County
22 even reports to the pack rim for purposes of log prices?

23 A. It's a survey so I do not know the respondents
24 and where they're located specifically but all the
25 redwood grows in Humboldt, Mendocino County. So they

1 have to collect the data from those counties.

2 Q. You have no idea if even Palco reports their
3 data?

4 A. No, I do not.

5 Q. You don't know if any timberland company
6 reports their data to the Pac Rim in Humboldt County?

7 A. Specifically in Humboldt County, no.

8 Q. And you don't know for sure in Mendocino
9 County?

10 A. Well, they have to get redwood prices from the
11 counties where redwood grows, so it's a stretch to say
12 that they don't collect them in either county.

13 Q. But what you do know is it's not required by
14 state law to submit those prices -- that pricing data?

15 A. No, there's many pricing reporting services
16 that aren't required by state law.

17 Q. And there's no penalty for inaccurate
18 information, or for that matter incomplete information?

19 A. No.

20 Q. Is that correct?

21 A. That's correct.

22 Q. Okay. So -- and did you read Mr. Zuniga's
23 deposition in this case?

24 A. I haven't. No, I haven't reviewed all of it.

25 Q. So you're not aware of the fact that

1 Mr. Zuniga says many times people falsely report those
2 numbers for various competitive reasons?

3 MR. McDOWELL: Objection, Your Honor, I
4 think that's a mischaracterize of my client's testimony.

5 A. I can't answer that.

6 THE COURT: What did he say?

7 MR. McDOWELL: He said that he -- repeat
8 what you said. He said he --

9 MR. KRUMHOLZ: I thought that's what he
10 said.

11 MR. McDOWELL: Falsely gave information?

12 THE COURT: He said that many people
13 falsely give false information for various --

14 MR. KRUMHOLZ: I didn't even mention
15 Mr. Zuniga --

16 THE COURT: For competitive reasons.

17 MR. SHIELDS: He testified that he would
18 give them a bigger number to give himself some leeway
19 and then maybe later bidding.

20 MR. McDOWELL: But it wasn't false.

21 MR. SHIELDS: He's characterizing it a
22 little bit but he's on the mark.

23 MR. McDOWELL: Your Honor, we can go to
24 the deposition but it was certainly not false.

25 THE COURT: Okay.

1 MR. KRUMHOLZ: I'm not saying he did it.
2 I'm saying that he --

3 MR. McDOWELL: That was the only
4 testimony that was provided regarding submitting
5 information was he did. He had no knowledge about what
6 other people did. So you've got to pick, either he was
7 talking about himself or he didn't --

8 MR. KRUMHOLZ: I'm going to pick what
9 Mr. Shields said.

10 THE COURT: Okay. He'll be here
11 tomorrow.

12 Q. (By Mr. Krumholz) And you know of no study of
13 showing the reliability or validity of the information
14 that's provided in Pac Rim Association, right?

15 A. I compared, so I checked the validity of the
16 prices.

17 MR. KRUMHOLZ: I'll object as
18 nonresponsive.

19 Q. (By Mr. Krumholz) You don't know of any study
20 that's been done, published study, any literature out
21 there that analyzes the reliability of the Pac Rim data,
22 correct?

23 MR. JONES: Your Honor, Counsel has just
24 realized he asked the wrong question. He said you're
25 not aware of any study. He starts to answer I studied

1 it and he says, oh, I meant a published study. Let him
2 answer the question.

3 THE COURT: But in addition to that,
4 you're not supposed to just jump on the witness when he
5 doesn't answer a question. You're supposed to direct it
6 to me. So the normal way we do this is you're supposed
7 to answer just the question he asks, not a different
8 question. If you don't understand the question, you ask
9 him to explain it. You're supposed to let him try to
10 answer. If it's nonresponsive, suggest it. Okay.

11 Q. (By Mr. Krumholz) You don't know of any study
12 that's been done, written or otherwise that has analyzed
13 the reliability of that data?

14 A. No, not a published study.

15 Q. And you don't know response rates of the log
16 buyers or sellers in connection with the Pac Rim data,
17 right?

18 A. No, I do not.

19 Q. You don't know the percentage of people who
20 decline to speak with the Pac Rim personnel?

21 A. No, I do not.

22 Q. You don't know the number of respondents?

23 A. It can't be very many because there aren't
24 that many sellers but no, I do not.

25 Q. Or the reliability of the respondents?

1 A. No.

2 Q. You certainly don't know whether Scopac or
3 Palco responds?

4 A. No.

5 Q. And you used this, the Pac Rim data despite
6 knowing that it is 10 to 15 percent lower than SBE
7 prices?

8 A. I made the comparison to SBE and found it to
9 be lower, which seemed appropriate given the market that
10 we're in.

11 Q. But you used it despite the fact that SBE --
12 it was 10 percent lower than SBE, and then in addition
13 to that 10 percent reduction, it's 10 percent lower, is
14 that what you said?

15 A. I may have quantified it.

16 Q. Let's go back and do the waterfall on this.
17 So you know they're 10 percent lower and that was okay
18 because of the market, that's what your testimony is?

19 A. Correct.

20 Q. But then you took 10 to 15 percent off of that
21 because of the market, true?

22 A. Because of the market conditions.

23 Q. Yes.

24 A. At the time.

25 Q. That's what I'm referring to.

1 A. Not the market but the market conditions.

2 Q. And you also used them in connection with your
3 modeling that you did in January of 2007; is that right?

4 A. Yes.

5 Q. Now, I want to make sure that I got this
6 right. Never before in your career have you ever
7 actually input Pacific Rim Wood Market prices into any
8 sort of appraisal or valuation that you have performed
9 prior to this case?

10 A. As you've already indicated, this is the first
11 redwood appraisal where I needed redwood prices.

12 Q. It has other prices, doesn't it? You've been
13 thinking about an excuse for this one.

14 MR. SCHWARTZ: Objection, Your Honor.

15 Q. (By Mr. Krumholz) You know the Pac Rim Wood
16 Market has more than redwood prices, do you not? Do you
17 not even know that?

18 THE COURT: Do you know that?

19 A. I do know that they have other prices.

20 Q. Okay. And never before in your career have
21 you ever actually used, input these prices into an
22 appraisal or a valuation prior to this case?

23 A. I have reviewed the work that they have done.

24 MR. KRUMHOLZ: Objection. Your Honor,
25 that's not my question. He answered the question with

1 one word in his deposition. I request that he only ask
2 that question -- answer that question.

3 THE COURT: Have you ever used them
4 before?

5 THE WITNESS: Pacific Rim Wood? No.

6 Q. (By Mr. Krumholz) And in fact, you don't even
7 subscribe to the Pac Rim Wood Market pricing guide?

8 A. No.

9 Q. Never have?

10 A. No.

11 Q. Never found it important enough to your
12 practice to actually send off a form saying please send
13 me that pricing data?

14 A. No, I have not subscribed.

15 Q. Instead, what you did was take pricing data
16 that was 10 percent lower than SBE, which you thought
17 was somehow appropriate for the market, and then reduced
18 it even further for the market, another 10 to 15
19 percent?

20 A. Market conditions.

21 Q. That's what you did?

22 A. Yes.

23 Q. Okay. And you did it because that gentleman
24 right there, Mr. Dean, told you to do it?

25 A. No.

1 Q. MRC provided you that data, true?

2 A. Adam Steinbeck at Mendocino provided it to me.

3 Q. You're suggesting that Mr. Dean isn't the one
4 that told you about that data? Is that your testimony?

5 A. Mr. Dean or MRC. Don't confuse the issue. I
6 got it from MRC.

7 Q. They're the ones who apprised you of that
8 data?

9 A. They provided it as a good time series, yes.

10 Q. And you asked for it even though you had all
11 the availability to SBE prices that you wanted, right?

12 A. Because I was looking for additional sources
13 of data.

14 Q. Now, what's another source of data that you
15 use for log prices?

16 A. In Humboldt County?

17 Q. Period. What other sources? Log Lines?
18 Didn't you say that?

19 A. Log Lines is a good reporting service in
20 Oregon and Washington.

21 Q. You didn't look for another service in
22 California that was like Log Lines? You're not
23 suggesting Log Lines and Pacific Rim are similar, are
24 you?

25 A. I am absolutely suggesting that.

1 Q. We'll get into that a little later.

2 A. Okay.

3 Q. Now, you've also done market surveys before
4 and used those survey results to input the data for your
5 modeling, your discounted cash flow modeling?

6 A. Data collection, yes.

7 Q. And you've actually used the average of what
8 you find in connection with those market surveys, your
9 own market surveys of particular regions in doing your
10 valuations and modeling, right?

11 A. I think it mischaracterizes what I do.

12 Q. Okay. That's fine. You call people from time
13 to time in a particular geographic region to figure out
14 what they're buying or selling logs for, right?

15 A. As one source of data, yes.

16 Q. And many times what you've done is taken those
17 market surveys that you perform on your own in the exact
18 geographic region that you're looking at and use the
19 average or a combination of those log prices in your
20 valuation modeling, right?

21 A. With other sources of data, yes.

22 Q. I know that you're considering it, I know all
23 that. But actually you're using that data point, right?

24 A. That's one data point, yes.

25 Q. And you also incorporate that -- an average of

1 those numbers into projections from time to time?

2 A. Again, I think you mischaracterize what I do,
3 but I do collect that data as one source of information.

4 Q. I just want to make sure that it's not a
5 semantics things that's going on here. You talk to log
6 buyers and sellers to get market prices for logs?

7 A. Yes.

8 Q. Okay. And what do you do with that
9 information once you get it if you want to use it for
10 purposes of your modeling?

11 A. For purposes of appraisals I typically go and
12 check the market for different sources of data. Log
13 sellers and buyers is one. Price reporting services,
14 state reporting of data, and also typically company
15 harvest reports that they supply, which show what they
16 bought and sold their timber for. And so those sources
17 are all combined to develop log prices for different
18 species, different grades. So it's not just a single
19 source that's used.

20 Q. I understand you consider a lot of things.

21 A. No, it's more than just considering. I'm
22 actually looking and evaluating these different data
23 sources and their reliability and then using them to
24 create the best possible prices.

25 Q. You're trying to use it to create a starting

1 point, right?

2 A. That's the first point, yes.

3 Q. Have you ever used as starting point the
4 actual data that you've gotten from surveys of the
5 market like I've just described?

6 A. You know, to be honest, probably not. It is a
7 single source.

8 Q. Have you chosen it over other sources?

9 A. To be honest, no. I usually typically rely on
10 log counting reports.

11 Q. Back to the Pac Rim pricing just for a moment.
12 At the time of your deposition, you were not aware but
13 you now are aware that the Pac Rim Wood Market stopped
14 publishing redwood data as of April of 2007?

15 A. I believe it was August, but that's --

16 Q. But you weren't even aware of that at the time
17 of your deposition?

18 A. My memory did not serve me at that time.

19 Q. Well, memory, you didn't ever know that
20 before.

21 A. Well, I did know that at the time of the
22 appraisal when I was combining the data, but in my
23 deposition I did not recall it.

24 Q. Before we break for the night I just want to
25 get one thing perfectly clear. At the time of your

1 deposition --

2 A. Yes.

3 Q. -- you testified that you input Pacific Rim
4 pricing data through February of 2008?

5 A. Absolutely.

6 Q. You did that yourself, right?

7 A. That was what I said in my deposition.

8 Q. Okay. And you told us that you got that
9 information from Mr. Dean and MRC, right?

10 A. They were the source of the Pacific Rim Wood
11 data.

12 Q. And what you never did was go back and figure
13 out if it was accurate or reliable, that data?

14 A. No, I did do that.

15 Q. No, you didn't do that, right? You told us
16 that in your deposition. You didn't go back to
17 determine whether the information they provided you
18 actually was even available during that time frame,
19 right?

20 A. What I recall was I said I was -- I looked at
21 the data and as of February I went back to my
22 spreadsheets and recall now that it was back only to
23 August where the last data entries in that sheet. I was
24 looking at formulas that were lower in the row of months
25 and that's why my visual memory was off. So I did use

1 that. I didn't confirm the data.

2 Q. You called Pacific Rim right after your
3 deposition and you talked to Ola, didn't you?

4 A. No.

5 Q. Did you have someone do that?

6 A. I did check, yes.

7 Q. Okay. Did that person talk to Ola?

8 A. I do not know that answer.

9 Q. And you checked to see when they stopped
10 publishing the data because you were concerned that you
11 had actually used data that didn't exist?

12 A. Well, I didn't actually use the data.

13 Q. Is that true?

14 A. No.

15 MR. SCHWARTZ: Your Honor, he's not
16 letting him answer the questions again.

17 THE COURT: Let him answer the question.

18 A. I didn't use the data incorrectly, but I did
19 not recall the last month that it was reported.

20 Q. Okay. What I asked you was --

21 MR. KRUMHOLZ: May I approach, Your
22 Honor?

23 THE COURT: Sure.

24 Q. (By Mr. Krumholz) Page 134 of the deposition
25 just the other day, line 12. I asked you "what are the

1 latest redwood prices published with the Pacific Rim
2 Wood Report of which you are aware?" Answer: "Again,
3 the last prices I have seen were for February or March.
4 I have to look. I think they were at least for
5 February." Did I read that correctly?

6 A. Absolutely.

7 Q. You were talking about February or March of
8 2008, right?

9 A. Because my visual memory --

10 Q. Is that right?

11 A. Yes, I was talking about --

12 MR. JONES: Your Honor, objection.

13 MR. KRUMHOLZ: Your Honor, I have a right
14 to a yes or no answer.

15 THE COURT: Stop. One person talks at a
16 time. Do you have an objection?

17 MR. JONES: Yes, Your Honor.

18 Mr. Krumholz is very big on improper use of impeachment.
19 The witness has already admitted that his testimony --

20 MR. KRUMHOLZ: You know what, I don't
21 want coaching from -- if you have an objection, state
22 it.

23 THE COURT: Hold it. Stop. You don't
24 get to yell at him. First of all, you're not even
25 supposed to talk to him, you're supposed to talk to me.

1 MR. KRUMHOLZ: Your Honor, I object to
2 the speaking objection. He has been --

3 THE COURT: His point is that he admitted
4 he made a mistake in his deposition. That's what he
5 said.

6 MR. JONES: That's right. And there's no
7 reason to confront him.

8 THE COURT: I think he gets a chance to
9 point that out because if he said one thing in his
10 deposition, he's saying a different now, he gets to even
11 make that point. Now, which was true, then or now? I
12 mean, one way or the other. So I think he can properly
13 impeach the witness by saying he said the wrong thing in
14 his deposition.

15 MR. JONES: But Your Honor, my point is
16 once he's admitted he said the wrong thing in the
17 deposition he doesn't need to go read it because he has
18 admitted it. If he denied making a mistake, then it
19 would be proper to read the deposition. Once he's
20 admitted it, you don't get to go read the deposition and
21 hit him again and say you admitted being wrong, right?

22 THE COURT: So that's the real point is
23 we're beating him over the head with what he said. You
24 know, I guess you can do a little of that but you've
25 done that. Okay. So now it's time to break.

1 MR. SCHWARTZ: Your Honor, before we
2 break, as Mr. Shields said, he did not read the rest of
3 the questions on that subject and I would ask him to
4 read the following two questions and the answers from
5 that.

6 THE COURT: What were the following two
7 questions?

8 MR. KRUMHOLZ: Actually, Your Honor, I
9 don't think it's optional completeness. I did it
10 because of impeachment. That's a total different topic.

11 THE COURT: You can read them now.
12 What's the next two sentences?

13 MR. SCHWARTZ: I won't read them.

14 THE COURT: Read it.

15 MR. KRUMHOLZ: I'll read it if you want
16 to, Your Honor. "Would it matter if they had stopped
17 publishing at some point?" "It wouldn't matter." "For
18 redwood it wouldn't matter, but it would matter if it
19 were going forward."

20 THE COURT: Okay. Is that what you
21 wanted him to read?

22 MR. SCHWARTZ: Well, I think it's the
23 next sentence. I can't see it on the screen, but --

24 THE COURT: Okay. Well, if somebody
25 needs to present that, they can present that tomorrow.

1 We will start at 8:30 tomorrow morning. Everybody be
2 ready to go.

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THE STATE OF TEXAS:

COUNTY OF NUECES:

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