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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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

* *

CONFIRMATION HEARING
TAKEN ON APRIL 10, 2008

* *

On the 10 day of April, 2008, the above entitled and numbered cause came on to be heard before said Honorable Court, RICHARD S. SCHMIDT, United States Bankruptcy Judge, held in Corpus Christi, Nueces County, Texas.

Proceedings were reported by machine shorthand.

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* * * * * *

INDEX

Redirect Examination by Mr. Clement 376

EXHIBITS

NUMBER	DESCRIPTION	PAGE
IT 1 and 4 --		18

THE CLERK: Rebecca Riley.

MR. McLAIN: Present, Brad McLain representing Rebecca Riley.

THE CLERK: Alan Gover. Alan Gover?

(No response.)

THE CLERK: Robert Black.

MR. BLACK: Present.

THE CLERK: Brian Metcalf. Brian Metcalf?

(No response.)

THE CLERK: Ira Herman.

(No response.)

THE CLERK: Allison Byman. Hello? It sounded like we lost a call. Okay. How about Brian Metcalf, is he present?

(No response.)

THE CLERK: Ira Herman?

(No response.)

THE CLERK: Allison Byman.

MS. BYMAN: Present.

THE CLERK: Okay. Martha Romero.

(No response.)

THE CLERK: Wendy Laubach.

(No response.)

THE CLERK: Christopher Johnson.

(No response.)

THE CLERK: Steven Hoort.
MR. HOORT: I'm present. Thank you.
THE CLERK: Thank you. Joli Pecht.
MS. PECHT: Present.
THE CLERK: Thank you. Brett Young.
MR. YOUNG: Present.
THE CLERK: Matt Underwood.
MR. UNDERWOOD: Present.
THE CLERK: Wei Wang.
(No response.)
THE CLERK: Heather Muller.
MS. MULLER: Good morning.
THE CLERK: Thank you. Jacob Cherner.
MR. ADAMS: This is Lawrence Adams for Mr. Cherner.
THE CLERK: Thank you. Stephen Bumazian.
(No response.)
THE CLERK: Nathan Rushton.
MR. RUSHTON: Present.
THE CLERK: Thank you. Sharon Dugan.
MS. DUGAN: Present.
THE CLERK: Thank you. Marti Murray.
(No response.)
THE CLERK: Eric Waters.
(No response.)

THE CLERK: Mark Worden.
MR. WORDEN: Present.
THE CLERK: Thank you. Francine Brodowicz.
(No response.)
THE CLERK: Mitchell Socket.
MR. SOCKET: Present.
THE CLERK: Thank you. Ephraim Diamond.
MR. DIAMOND: Good morning, I'm also here with Pierce Crosby.
THE CLERK: Thank you. Kirk Miller.
(No response.)
THE CLERK: Erin Ross.
(No response.)
THE CLERK: David McLaughlin.
(No response.)
THE CLERK: Dan Kamensky.
(No response.)

THE CLERK: Clara Strand.
(No response.)
THE CLERK: John Driscoll.
(No response.)
THE CLERK: James Delaune.
(No response.)
THE CLERK: Kenneth Crane.

11

(No response.)
THE CLERK: And Stephen Zelin.
MR. GOVER: Excuse me, ma'am, this is Alan Gover, I don't know if you can hear me, you might have called before but I'm present also on the phone.
THE CLERK: Okay. Alan?
MR. GOVER: G-O-V-E-R.
THE CLERK: Okay. Thank you, sir.
MS. LAUBACH: This is Wendy Laubach, I'm also present.
THE CLERK: Okay. Thank you, ma'am. How about Brian Metcalf?
(No response.)
THE CLERK: Ira Herman?
(No response.)
THE CLERK: Christopher Johnson?
(No response.)
THE CLERK: Wei Wang?
(No response.)
THE CLERK: Stephen Bumazian?
(No response.)
THE CLERK: Marti Murray?
(No response.)
THE CLERK: Eric Waters?
(No response.)

12

THE CLERK: Francine Brodowicz?
(No response.)
THE CLERK: Ephraim Diamond?
MR. DIAMOND: Present.
THE CLERK: Thank you, sir. Kirk Miller?
(No response.)
THE CLERK: Erin Ross?
MR. ROSS: Present.
THE CLERK: Thank you. David McLaughlin?
MR. McLAUGHLIN: Present.

THE CLERK: Thank you. Dan Kamensky?
(No response.)
THE CLERK: Clara Strand?
(No response.)
THE CLERK: John Driscoll?
(No response.)
THE CLERK: James Delaune?
MR. DELAUNE: Present.
THE CLERK: Thank you. Steven Zelin?
(No response.)
THE CLERK: And Kenneth Crane.
THE OPERATOR: This is the operator. I do have Kenneth Crane now on the line.
THE CLERK: Thank you.
THE OPERATOR: Madam Clerk, I do have

Martha Romero now.
THE CLERK: Thank you.
CSO: All rise.
THE COURT: Be seated. All right in the courtroom, we haven't done those appearances yet.
MS. COLEMAN: Good morning, Your Honor, Kathryn Coleman, Richard Doren, Eric Fromme, Gibson Dunn & Crutcher for debtor Scotia Pacific Company.
THE COURT: All right.
MR. HOLZER: Pete Holzer and Shelby Jordan for Pacific Lumber along with George Lamb and Lucky McDowell of Baker Botts.
MR. SHIELDS: Your Honor, Todd Shields along with Bill Greendyke and Richard Krumholz for Bank New York Indentured Trustee for the timber noteholders.
MR. FIERO: John Fiero of Pachulski Stang for the Committee, Your Honor, good morning.
MR. PENN: Good morning, Your Honor, John Penn also with David Neier, Steve Schwartz, Carey Schreiber, all on behalf of Marathon Structured Finance.
THE COURT: Okay.
MR. JONES: Good morning, Your Honor, Evan Jones of O'Melveny & Myers representing Bank of America.
MR. HALE: Good morning, Your Honor, Brian Hale, Goodwin Proctor, representing Mendocino Redwood

Company.
MR. PASCUZZI: Good morning, Your Honor,

Paul Pascuzzi for the California State Agencies.

MR. STERBACH: Charles Sterbach for the United States Trustee.

MR. SPIERS: Good morning, Your Honor, Jeff Spiers and Alan Gover on the phone for Maxxam.

THE COURT: Okay. I have made available the following dates to continue this trial after we finish this week, April 29th through the 2nd of May. So we have bumped some trials that were set on those dates, and we would like to finish this in those dates.

MR. HOLZER: What times, Your Honor?

THE COURT: April 29th through May the 2nd.

MR. HOLZER: Is it at 9 o'clock?

THE COURT: Oh, sure. If it would help to go a littler earlier, we might do that. All right. And it also occurred to me that there are a couple of weeks between the end of this week and that time, and while there are certainly the noteholders and these plan proponents are a long way off, they certainly could be an effort made between then and now to see if these two tables can resolve their differences. Whether that happens or not, there are a couple of ways that can be

done. I don't know if we can talk the Governor into mediating that dispute. But it would probably be too hard for his office to gear up to do that anyway. But we do have somebody else that might be able to do it again, but I don't know. Or you could do it on your own. But certainly it would be wise for both sides, depending on what they want to accomplish here, to try to find a way to -- try to find a way to resolve this dispute before we get to the end. But in any event, there are any number of bad things that could happen to every party in the room as a result of the fact that bankruptcy is not always the answer to every problem in the world. But it might be in this one. It might not be. I don't know. Let's move on. What's our next witness?

MR. SHIELDS: Your Honor, Todd Shields for Bank of New York Indentured Trustee. We will call James E. Fleming.

THE COURT: All right.

JAMES E. FLEMING,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHIELDS:
Q. Morning, Mr. Fleming. State your full name.
A. James E. Fleming.
Q. What do you do for a living?

A. I'm a consulting forester and real estate appraiser.
Q. Do you consider yourself to be an expert in the field of valuing commercial timberlands, including timberlands that contain California redwoods?
A. Yes, I do.
Q. I'll come back to your qualifications in just a moment, but I want to establish your role in this case. Were you retained by the indentured trustee to appraise the timberlands owned by Scotia Pacific Company, L.L.C., called Scopac and to express an expert opinion as to their value?
A. Yes, I was.
Q. Did you do that?
A. Yes.
Q. What opinion did you reach?
A. That the market value of the Scotia Pacific property was $605 million as of October 1, 2007.
Q. Why did you select an October 1, 2007 value date?
A. I had data through that period, and that seemed like a good date.
Q. Did anyone suggest to you what date you should select as the value date in your appraisal?
A. No, they did not.

Q. Did your selection of the --
SPEAKER: Excuse me, Your Honor. It's kind of hard to hear the witness on the phone. If he could keep his voice up.
THE COURT: Thank you. You need to get a little closer to the microphone or pull the microphone closer to you. Go ahead. Thank you, whoever that was. I appreciate it.
Q. (By Mr. Shields) Did you select the October 1, 2007 valuation date for your appraisal of the Scopac timberlands with any intent to manipulate or reach a particular result?
A. No, not at all.

THE COURT: You're going to have to move closer to the microphone and lean in, if you would. All right. Go ahead. Or you're going to have focus on that microphone and talk louder.
MR. SHIELDS: Thank you, Your Honor.
Q. (By Mr. Shields) Mr. Fleming, have you described the basis for your opinion that the Scopac timberlands have a value of $605 million in the proffer of James E. Fleming dated April 4, 2008 and in the appraisal report regarding the Scotia Pacific property dated March 10, 2008 that are marked as Exhibits 1 IT, Indentured Trustee Exhibits 1 and 4 respectively?

18

A. Yes.
MR. SHIELDS: Your Honor, the indentured trustee offers Exhibits 1 and 4 into evidence.
THE COURT: Any objection?
MR. BRILLIANT: No objection.
THE COURT: All right. They're admitted.
Q. (By Mr. Shields) Mr. Fleming, I want to turn now to your qualifications to appraise commercial timberlands and to express expert opinions in this case. Describe your college education.
A. I have a bachelor of science degree in forestry from the University of California at Berkley in 1965.
Q. And did you do graduate work after you took that degree in 1965?
A. Yes, I did.
Q. And again, the degree was in what field?
A. The master of forestry program.
Q. Okay. I'm sorry, I'm backing up. Your undergraduate degree, your bachelor of science, what was the degree in?
A. Forestry.
Q. All right. And the graduate work, also at University of California Berkley?
A. Yes, sir.
Q. And what was the field?

19

A. In forestry.
Q. All right. Did you obtain a master's degree in forestry?
A. No, I did not.
Q. What percentage of the course work in the

master's in forestry program did you complete?
A. Pretty much finished all of the course work. There might have been one or two courses that I did not complete.
Q. After leaving graduate school, did you start your career in forestry?
A. No.
Q. Why not?
A. I went into the military service.
Q. What branch?
A. U.S. Marine Corps.
Q. How long were you in?
A. About three years.
Q. What was your job in the Marine Corps?
A. I was an infantry officer.
Q. Did you serve in Vietnam?
A. Yes.
Q. What year?
A. 1968.
Q. After your military service, did you begin your

career in forestry consulting and real estate appraisal?
A. Yes, I did.
Q. What year was that?
A. In 1971.
Q. Where?
A. In Sacramento, California.
Q. Have you been practicing consulting forestry and real estate appraisal in California since 1971?
A. Yes, I have.
Q. Have you spent your entire career as a California forestry consultant and real estate appraiser?
A. Yes.
Q. Are you a California registered professional forester licensed by the State of California?
A. Yes, I am.
Q. Since what year?
A. 1973.
Q. Are either Mr. Yerges or Mr. LaMont California registered professional foresters?
A. No.
Q. Are you also a California certified general real estate appraiser licensed by the State of California?
A. Yes, I am.

Q. Are you a member of the Appraisal Institute and

21

do you carry the designation of an MAI appraiser?
A. Yes.
Q. How long have you had that designation?
A. May, 1980.
Q. Did you prepare your expert witness report in this case in conformity with the requirements of the code of ethics and the standards of professional appraisal practice of the Appraisal Institute?
A. Yes, I did.
Q. Does your report comply with the uniform standards of professional appraisal practice?
A. Yes, it does.
Q. All right. During the last 20 years or so, what percentage of your professional time has been devoted to consulting on or appraising timberlands?
A. Going back 20 years, probably 90 to 95 percent, but in the last ten or 15 years, pretty much 100 percent appraising.
Q. Commercial timberlands?
A. Commercial timberlands.
Q. Approximately how many timberland properties have you appraised in your career?
A. Hundreds.
Q. Have you appraised timberlands in Humboldt County, California?

22

A. Yes, I have.
Q. That included redwood stands?
A. Yes.
Q. Describe the type of clients for whom you have appraised timberlands in the last ten or 15 years by generic category of clients.
A. I have a wide variety of clients, corporate and federal and state agencies, conservation groups such as the Trust Republic Land, the Nature Conservancy, Save the Redwood League and others.
Q. What federal agencies have you been hired by?
A. U.S. Department of Justice, Bureau of Land Management, the U.S. Forest Service.
Q. Has California state agencies hired you?
A. California State Lands Commission, California Water Quality Board, the Wildlife Conservation Board,

Department of Transportation.
Q. Have you been hired by timber companies?
A. Yes, I have.
Q. Have you been hired to do appraisals by large landowners?
A. Yes.
Q. Have you been hired by investors who are evaluating whether to acquire timberlands?
A. Yes.

Q. Have you ever done timberland appraisal work for any of the parties in this case other than the indentured trustee?
A. Yes, I have.
Q. Who was that?
A. Scotia Pacific.
Q. When was that?
A. 2003.
Q. Who at Scopac contacted you?
A. I believe it was Sam Boyd.
Q. What is Sam Boyd's role at Scopac or was it then in 2003?
A. He's a forester with Scotia Pacific.
Q. In general, what were you asked to do by Scopac in 2003?
A. To appraise the marbled murrelet conservation areas.
Q. Did you finish that work?
A. No.
Q. Why not?
A. I had given them an indication of my preliminary values, and they terminated my assignment.
Q. All right. I want to turn for a moment to the issue of methodology, how you went about appraising the Scopac timberlands and by comparison certain aspects of

the methodology used by other evaluators in this case, other appraisers. We all know, of course, that there are three generally recognized methods, the cost approach, the comparable sales approach and the income approach. Did you consider using the cost approach in your appraisal of the Scopac timberlands?
A. Yes, I did.
Q. Did you use them?

A. No.
Q. Why not?
A. That approach is really designed to appraise properties that are improved with such -- such as an office building or apartment complex, and it's really not applicable to appraisal of timberland.
Q. All right. Did either Mr. Yerges or Mr. LaMont attempt to use the cost approach in their appraisal work in this case?
A. No.
Q. All right. Did you attempt to use the comparable sales approach in your appraisal work in this case?
A. Yes, I attempted to use the approach.
Q. Did you complete an appraisal using in part the comparable sales approach in this case?
A. No.

Q. Why not?
A. I made a search for comparable sales and looked at the data and I just couldn't determine that the sales that were available were not comparable enough to produce a reliable indicator of value.
Q. In your professional opinion?
A. In my professional opinion.
Q. What -- tell the Court what about the Scopac timberlands may have contributed to your difficulty in finding what you consider to be comparable for that sort of valuation approach.
A. Well, it's a relatively unique property. It's over 200,000 --
Q. Could you speak up just a little bit, Jim.
A. It's a relatively unique property. It has over 200,000 acres, a considerable amount of merchantable timber, it's located in Humboldt County and other details such as the Habitat Conservation Plan.
Q. Did Mr. Yerges and LaMont purport to rely on a comparable sales approach in their valuation work in this case?
A. Yes, they did.
Q. And do you believe it was a valid approach for them to take in this case?
A. No.

Q. Why?
A. As I indicated, I don't think any of the sales that they used were really truly comparable and would not be able to produce a meaningful indicator of value.
Q. All right. We've talked about the cost approach which you considered, but did not use because it was not appropriate to the subject property as appraisers say. We have talked about the comparable sales approach which you attempted to use, but could not find comparables. I take it that you did end up using the income approach in appraising the Scopac timberlands?
A. Yes, I did.
Q. All right. And in using an income approach, did you use a discounted cash flow methodology?
A. Yes.
Q. Did Mr. Yerges and Mr. LaMont also use a discounted cash flow analysis as part of their income approach appraisal?
A. Yes, they did.
Q. I want to cover just two points about that in general methodology and we'll leave all the other lawyers here to go into the details after I pass the witness. But I would like for you to explain to the Court the theory of getting an indication of current market value of an income producing property by looking at the future

net cash flows that that property is expected to generate. And in particular, my focus is whether or not in doing that sort of cash flow analysis a person properly applying the methodology looks at all of the cash flows in the future.
A. That's correct.
Q. In perpetuity?
A. Yes.
Q. All right. Now, in doing that, would an appraiser such as yourself typically use an initial projection period of some number of years and discount cash flows back to the valuation date as to that period and then also as to the rest of perpetuity use a residual approach that captures into perpetuity estimated cash flows for that property?
A. That's --
Q. Is that correct?
A. That's correct.
Q. And then do you use a terminal cap rate or

residual discount rate to discount the residual or reversion value of the property all the way back to the value date?
A. Yes.
Q. And will that discount rate often be different than the one for the initial period?

A. Yes.
Q. Okay. Now, in this particular case, in doing the discounted cash flow analysis, I know you considered all of the cash flows into perpetuity, but what was the initial period that you selected for your discounted cash flow analysis? How many years?
A. I used the ten-year projection period.
Q. Why?
A. For forest properties in the past, I considered five years, but it just isn't long enough due to the cyclical nature of the timber markets and 15 years seems a little too long, too much risk. And I prefer to use ten years.
Q. All right. Now, Mr. Yerges and Mr. LaMont used 50-year initial projection periods followed by a reversion analysis. Do you consider their selection of a 50-year initial projection period to be a reasonable approach as to this property?
A. No, I do not.
Q. Why?
A. I think that essentially just too much risk involved of what's going to happen over the next 50 years. And a ten-year projection period is much more reasonable.
Q. All right. I'm going to finish up with one

last line of questions, and it focuses on your report. I actually have two quick lines of questions. I want to set this up for all the other lawyers. The proffer of James E. Fleming, Indentured Trustee Exhibit 1, is the information in that proffer true and correct?
A. Yes, it is.
Q. All right. You've sworn to it and you stand behind it?
A. Yes.
Q. All right. Exhibit 2, this is the appraisal report. Does it describe the work that you did in coming

up with an appraised value of $605 million for the Scopac timberlands?
A. Yes, it does.
Q. And does it explain the basis for your opinions?
A. Yes.
Q. All right. When you were asked to do this appraisal, and in particular, when you were asked to prepare this expert witness report which has the date of March 14, I believe, it might be March 11 --
A. 10.
Q. 10. Okay. I stand corrected, March 10, 2008. Did anyone ever see a draft of this report before the day you issued it?

A. No.
Q. Did anyone try to influence in any way any aspect of this report as prepared by you?
A. No.
Q. Now, I understand it was issued a few days before the deadline and date on it. Was there a jot or a scribble in this report that was ever changed after the moment it left your hands?
A. No changes.
Q. Okay. Is this report, your $605 million appraisal and all the basis for it, is it your untainted professional opinion about the value of the Scopac timberlands?
A. Yes.
Q. Do you stand behind it?
A. Yes, I do.
MR. SHIELDS: All right. I'm going to let these other lawyers ask you some questions. Thank you.
MR. SCHWARTZ: Good morning, Your Honor. Steven Schwartz from Winston & Strawn on behalf of Marathon.

CROSS-EXAMINATION

BY MR. SCHWARTZ:
Q. Good morning, Mr. Fleming.
A. Good morning.

Q. You recall we met before your deposition?
A. Yes.
Q. This will be shorter. Do you agree that the

highest and best use of Scopac timberlands is its current use of commercial timberlands?

A. I estimate that the highest and best use of the property is primarily for the growth and harvest of commercial forest products.

Q. And why did you reach that conclusion?

A. It's based on my analysis.

MR. SHIELDS: Excuse me, Mr. Schwartz, Your Honor. Jim, we're having trouble hearing you even on this table, so if you could speak up.

THE COURT: The mic does amplify a little bit but it's really meant just to record the conversation, so you should talk as though everybody in the courtroom wants to hear you. I know that that -- you know, we're not used to -- we have microphones now, nobody learns how to project anymore but that's what you need to do is the whole courtroom is your audience. Thank you.

THE WITNESS: So this is not actually working?

THE COURT: It works, and if you get close to it it will amplify you, but we can't turn it up to the

point it's a good amplification system for the room and get a good recording, and we would prefer to get a good recording. So your job is to make sure they can hear you and the electronic job is to record to make sure we get a good recording. So what will happen is if we turn it up, we get feedback.

THE WITNESS: Thank you.

THE COURT: It's a good system, but not a great system. It's the government. Go ahead.

MR. SCHWARTZ: Thank you, Your Honor.

Q. (By Mr. Schwartz) Can you explain the factors that lead you to conclude that the use as commercial timberlands was the highest and best use for the property?

A. Yes. The highest and best use is the most reasonable and profitable use of the property. And in that analysis, you consider the legal feasibility, the economic feasibility, the legal permissible legal issues, and also whether it's physically possible.

Q. Are you aware of the proposals in the debtors' plan for a habitat preserve property?

A. Somewhat, yes.

Q. Is it your opinion that that would not be the highest and best use of the property?
A. That's correct.

33

Q. Can you explain why?
A. I don't think that -- if you're speaking of the residential development, I don't think that would be feasible on that property.
Q. Would you agree with me that in doing an evaluation it is important to have the most timely information possible?
A. I would base my appraisal on the best available data.
Q. And would more timely, meaning closer in time to the date of your appraisal, be more reliable than older data?
A. I would use the best data I have available, relative to my effective date of value.
Q. Do you have your proffer, which I believe is Exhibit 1, Indentured Trustee Exhibit 1 handy? Do you have a copy of that? If not, I'll give you one.
A. I do not.
MR. SCHWARTZ: May I approach, Your Honor?
THE COURT: You may.
MR. SCHWARTZ: I'm handing the witness what was marked as Indentured Trustee Exhibit 1.
Q. (By Mr. Schwartz) Mr. Fleming, this is your proffer, correct?
THE COURT: I don't think any of the lawyers are going to give you the wrong proffer, so let's move on. Let's assume it's your proffer.

34

A. Yes.
Q. Would you turn to page 22. And if you would look under section D-1-B. Do you see that section?
A. Yes, I do.
Q. And do you see at the end, and I'll read it into the record. "Flemings developed log values are based on recent log sales involving local timber and timely interviews with local log buyers and forest managers (log sales) which is a common practice by most appraisers and ensures that the final opinion or value is based on the best possible and most timely information." Did you write that statement?

A. Yes, I did.
Q. Do you agree with that statement?
A. Yes.
Q. Did you agree that data from March 2008 is more timely for these purposes than data from October 1st, 2007?
A. I selected October 1, 2007 because that was more or less the end of the data that I had.
THE COURT: I think you're asking -- or answering the question you think he's asking rather than what he's asking. He just asked you if one date is newer

than another date. It's sort of a rhetorical question but if he asks those questions, you need to answer the question that he asks.
Q. (By Mr. Schwartz) Would you like for me to repeat it?
A. Please.
Q. Do you agree that data from March 2008 would be more timely than data from October 2007?
A. I would -- my date of value was October 1, 2007, so the data that's relative to that data would be more timely.
Q. The October date would be more timely; is that your testimony?
A. Relative to my data, yes.
Q. If you had data from March of -- let's say January through March of 2008, would you have used it in your appraisal?
A. I did not have data available, so I used the best data I had available, which corresponded with October 1, 2007.
Q. I understand what you used and why. I'm asking you a different question. Which is if you had data available from the January through March period of 2008, would you have used that data instead of the data you used in your report?

A. To estimate my value in October 1, 2007? Probably not.
Q. Would you have used more recent valuation date if you had data from January through March of 2008?
A. If I had -- the date of value was after that, the data, I would have used that, yes.

Q. I don't think you're answering my question, so let me try it again.
THE COURT: I think he is. You asked if him if he was going to have a later date of value, then he said yes, I'd use the later information.
Q. (By Mr. Schwartz) But would you use the later date of value if you had the available information or would you still use October of 2007?
THE COURT: Are you asking him -- I'm not sure how he chose his date and I don't know how -- whether he, you know, was authorized to use a later date. He may have been instructed to use the date that he did. I don't know. He did not use it afterwards.
MR. SCHWARTZ: I believe the testimony on direct was that you selected the date and no one else but you determined what date to use; is that correct?
A. That's correct.
Q. Okay. So let me just try it again and then I'll move on. If you had data available from January

through March of 2008, would you have selected a more recent appraisal date than October 1st, 2007?
A. I don't know. I don't know what time we're talking about, what time frame. I worked on -- I've been working on this project for a while and I used October 1, and that's what I base my opinion of value on. Would I have had time to do something on March -- in March? I don't know.
Q. When did you prepare your appraisal report?
A. The report itself?
Q. Yes.
A. Probably in February or March.
Q. Of 2008?
A. I'm sorry, of 2008.
Q. Now, have you done anything since you issued the report in March of 2008 to update your appraisal analysis?
A. No.
Q. Do you agree with me that the prices of lumber are effective for the demand for lumber?
A. That's one factor.
Q. And the demand for lumber is impacted by the housing and construction market, would you agree with that?
A. It can be.

38

Q. In the last six months, would you agree that there's been a significant drop in demand for housing and construction?
A. There seems to be.
Q. And has that resulted in a drop in the prices of lumber in the last six months?
A. I believe some species of lumber have dropped in the price, yes.
Q. Has redwood prices declined in the last six months?
A. I have not really looked at the prices specifically, so I don't really know.
Q. Have the prices of Douglas Fir dropped in the last six months?
A. I believe they have.
Q. Do you know by what magnitude?
A. No.
Q. Do you have a range? 10 percent? 5 percent? 20 percent? Do you know?
A. No.
Q. You haven't looked at it?
A. I have not looked at it.
Q. Now, if the prices have declined by some magnitude, would that affect your value -- the current valuation as of today of the property?

39

A. Well, at this time of year, speaking in the late fall, winter season, prices normally drop. And then they come back in the spring. So I have not done any analysis at all as to what the values might be today.
Q. Were you in the courtroom when Mr. LaMont testified?
A. Yes.
Q. And do you recall that he testified that he has done an analysis using your approach, but changing one of the prices from $975 for thousand board feet to $800 or $850 for thousand board feet, do you recall that?
A. I do.
Q. And do you recall what he said the effect on the value would be with that change?
A. No.
Q. Have you done anything to see if Mr. Lamont's analysis in that regard is correct?

A. No.
Q. Now, in your appraisal, you assume that prices would increase by 3.5 percent per year, correct, on average?
A. Log prices?
Q. Yes.
A. Yes.
Q. Okay. How did you determine that 3.5 percent

40

was the appropriate price increase?
A. I reviewed available data for -- with regard to redwood log prices.
Q. What available data are you referring to?
A. I based primarily on trends indicated by California State Board of Equalization.
Q. Now, does that 3.5 percent increase include inflation?
A. Yes, those are on nominal terms.
Q. And what was the inflation rate that you used?
A. 2.75 percent.
Q. So your real rate of increase was .75 percent, correct?
A. Yes.
Q. Now, just so I understand the impact that had on your analysis, I think for a young growth redwood you started at $975 per thousand board feet, right, in year one; is that correct?
A. It doesn't sound familiar.
Q. Okay. Do you have your appraisal? I'm sorry. Let's look at your proffer. Do you have your proffer available still?
THE COURT: You gave it to him.
Q. (By Mr. Schwartz) yeah, I gave it to you. Do you still have it?

41

A. Yes.
Q. Okay. Would you turn to paragraph 38 on page 10. Do you see in that paragraph that you used $975 per thousand board feet for young growth redwood?
A. Yes.
Q. And that's what you used as your starting point for the first year, correct?
A. For young growth redwood, yes.
Q. Yes. And so when you did your 3.5 percent

increase in year two, the price you used would be 3.5 percent higher than $975, correct?
A. Yes.
Q. And then in year two, there would be another 3.5 percent increase, correct?
A. That's correct.
Q. And so on throughout your model, correct?
A. Over the ten-year projection period.
Q. So if the initial price that you used of $975 was inflated, that inflation would be compounded every year with the 3.5 percent increase, correct?
A. What do you mean by inflated?
Q. Well, if the price was too high and you should have used a lower price which is an argument different people make in this case, which you've heard. If someone were to conclude that your price was too high, then

that -- that mistake or problem in your report would be compounded each year by an additional 3.5 percent, correct?
A. This is a hypothetical now?
Q. Yes.
A. Mathematically it would continue to go up. Compounded, yes.
Q. Now, from whom does -- to whom does Scopac sell most of its timber?
A. Its timber?
Q. Yeah.
A. To Pacific Lumber Company.
Q. To Palco?
A. Palco.
Q. And what prices does Palco pay for the timber?
A. When?
Q. When they buy from Scopac.
A. I don't know.
Q. Do you know if it's based on -- do you know what SBE prices are?
A. Yes.
Q. Can you explain what SBE prices are?
A. SB -- the SBE, so-called SBE prices are harvest values that are developed biannually for -- to be used for the calculation of the state yield tax.

Q. And do you know if the SBE prices are the basis

on which Palco pays Scopac for its timber?
A. They are.
Q. Do you know how prices in the market today compare to SBE prices? Are they higher or lower?
A. I have not compared with today's -- you're talking about literally today?
Q. In the last six months.
A. I have made comparisons. There's some up and some down.
Q. Aren't SBE prices generally higher than the market price in the last six months?
A. Market price -- what market price are you talking about?
Q. The market price for logs.
A. For delivered logs?
Q. Yeah.
A. Delivered logs is different than the SBE value.
Q. I understand that. But when you adjust for that and make them apples to apples, aren't the market prices still in the last six months, been less than the SBE prices?
A. You can't really adjust those because you don't know what the logging cost is that was used by the SBE timber staff.

Q. You don't think it's possible to estimate what those logging costs are?
A. You can add a logging cost, but that doesn't necessarily mean that you're doing it the same way that the SBE timber staff did.
Q. If someone other than Scopac were to own timberlands and they were going to sell their timber, they would not be selling it to Palco at the same price that Palco currently pays for it; is that correct?
A. I don't have any idea.
Q. Well, do you know why Palco pays Scopac based on SBE prices?
A. No.
Q. You're not aware that there's an agreement between those two companies in that respect?
A. I'm aware of the agreement.
Q. And are you aware that the agreement describes how prices are to be set and that the basis of those prices are SBE prices?
A. There's an indication of how they're supposed

to be developed, yes.
Q. And it would be true, would it not, that if someone else bought or owned the Scopac timberlands and were selling their timber to Palco, they would be selling it based on market prices, not based on the agreement

45

between Palco and Scopac?
A. That's correct.
Q. And so if the market prices were lower than SBE prices, Scopac would get less for its timber than its currently getting from Palco?
A. If that was the case for that period of time.
Q. I want to turn now to your harvest rates in your analysis. Can you tell the Court what you determined the amount of harvest that would be done in your analysis over the first nine years?
A. A little over 81 million feet per year.
Q. And that was an average price, an average board feet, correct?
A. Yes.
Q. You weren't saying that every year it would be 81 million?
A. That's correct.
Q. Did you do any analysis to determine which years would be higher and which years would be lower than the 81?
A. No.
Q. How did you arrive at the 81 million?
A. Analysis and my available data.
Q. Can you be more specific? What analysis did you do of what data?

46

A. Initially I had allocated the volumes on the property in various categories, based primarily on information from Scopac foresters. For instance, the division of that volume by what we're calling harvest classes. And then also, analyzing or estimating how much volume would go into -- would be in areas like what I'm calling size one and size two lands. That would be the plantations and the young stands.
Q. And this is based on data you received from the company?
A. Primarily.
Q. What else, other than the data from Scopac, did

you use in determining your harvest value -- harvest amount?
A. Once I had the volume that was allocated to what I call the no restrictions class, I had to allocate the volumes by DBH class to get an indication of the distribution of the volume by tree size and also kept the analysis by watershed assessment area.
Q. Now, is the analysis that you did to come up with 81 million board feet detailed anywhere in your report?
A. I refer to the process, yes.
Q. Can you point to -- do you have your report in front of you?

A. No.
MR. SCHWARTZ: May I approach, Your Honor?
THE COURT: You may.
Q. (By Mr. Schwartz) Mr. Fleming, I'm going to hand you what I believe was marked as Indentured Trustee Exhibit 4, which is a copy of your appraisal. Could you point in your report to where you were referring to in your last answer?
A. I discussed considerations regarding log ability restrictions and other related considerations on page 17, 18, 19 and on 20 there's a table that describes the allocation of the merchantable timber by harvest class.
Q. Let's look at that table on page 20. Is there anywhere in your report where I can look to to see how you came up with the allocation set forth on page 20?
A. No.
Q. And so is there anywhere in your report where I can look to to see how you calculated the 81 million board feet?
A. No, although on page 34 of my report, 34 through 36, I give you more discussion with regard the actual estimate of my harvest levels through the first nine years of my projection period.
Q. But that doesn't contain any analysis of the 81

million board feet, does it?
A. It gives you some information of what I considered in the analysis, yes.
Q. But not the analysis itself?

A. No.
Q. Now, in your considerations of what harvest rate to use, did you look back at the historical harvest rate of the company in the past five to ten years?
A. I was aware of them.
Q. Did you factor those into your analysis?
A. No.
Q. Why not?
A. I'm factoring -- I'm trying to estimate the available -- the harvest level for the course ten years of my projection period based on my analysis of the available data.
Q. And some of that data, in your view, that does not include what the company had done in the last five to ten years?
A. No. I started with the volumes that I had as of October 1, 2007.
Q. Do you know what the harvest level was for the company in 2007?
A. I've heard -- I haven't seen the number so I don't know that I know.

Q. If I told you that was around 74 million board feet, does that sound about right?
A. That's what I've heard but I don't know if that's true or not.
Q. And so your proposal would increase that 10 percent each year on average in the first nine years, correct?
A. If that's what the mathematical difference is, I guess you're right.
Q. And do you know what the trend has been in terms of the harvest levels over the last five years for the company? Have they been stable? Going up? Going down?
A. They're lower than they were quite a while ago.
Q. What about over --
A. They were low this year apparently relative to earlier years in the last decade.
Q. Do you know what adjacency limitations are?
A. I know what the considerations are.
Q. Can you explain those to me?
A. Adjacency has to do with the parts of the forest practice rules.
Q. Can you be any more specific?

A. There's two types of -- well, two sections really in the forest practice rules. One deals with

sizes of harvest areas and the other deals with the stocking requirements, the minimum stocking requirements that are necessary before you can harvest an adjacent area.

Q. So would it be correct to say that after you harvest in a particular area of the forest, there are some restrictions on whether you can harvest in nearby locations to the area you just harvested?

A. Yes, there are temporary restrictions but there are specific restrictions.

Q. Now, in coming up with your 81 million board feet number, did you consider the adjacency restrictions that would apply to the property?

A. Yes.

Q. How did you do that?

A. In my analysis, I analyzed what volume would be available in the -- what I call the no restrictions areas. And I used the best data I had available to estimate how much could be harvested from those areas.

Q. Now, you did not do any allocation by stand, did you, as to which areas were going to be harvested in which years?

A. No, I did not.

Q. Okay. So how would you know if you harvested a particular stand whether you could harvest next year or

the following year if you didn't do that analysis?

A. What I was doing -- what I did was estimate the -- based on my analysis, the volume that could be harvested by log and tree size in the various portions of the property.

Q. Do you know if using your harvest rates the company would violate any of the adjacency limitations?

A. I did not -- I did not lay out each logging unit over the projection period. What I did was analyze the available timber and how much could be harvested, given the current stocking standards.

Q. So the answer is no to my question? You don't know if your harvest rates would result in a violation of the adjacency limitations?

A. They would not.

Q. How do you know that if you didn't do an analysis by stand?
A. This is a pretty big property and I allocated, for instance, volume that was in the plantation areas, in the young stand areas. I also allocated other volumes that were -- that could have been harvested, but for whatever -- for certain reasons I classified them as no harvest. So I basically went as far as I could as far as allocating volume that I don't think would be harvested during the first nine years of the projection period.

Q. You don't think it would be, but you don't really know, do you, because you didn't do a stand-by-stand analysis?
A. I did not do a stand-by-stand analysis.
Q. If I could, I'd like to show you what's been marked as MMX Exhibit 70.
MR. SCHWARTZ: And just so the Court is aware, this exhibit was added to our exhibit list yesterday, Your Honor, and we have updated your binder this morning. We provided you a new CD with it and all the parties received it last night. And I have hard copies here.
Q. (By Mr. Schwartz) Mr. Fleming, did you do any work for the noteholders in 2005?
A. Yes, I did.
Q. And what did you do?
A. I worked on collecting data and reviewing information.
Q. Did you begin an appraisal of the Scopac property?
A. I did some preliminary work on evaluation, yes.
Q. Did you ever come up with a final valuation?
A. No.
Q. In 2005?
A. No.

Q. Did you come up with harvest rates?
A. I had run some scenarios.
Q. Did you provide any written report to the noteholders in 2005?
A. I don't recall.
Q. Do you recognize Exhibit 70?
A. Not particularly.

Q. If you turn inside the front cover in the first sentence, you'll see that it says that "the content and analysis of this -- of this document were provided at least in part by Fleming Associates," do you see that?
A. Yes.
Q. And Fleming Associates is your company, right?
A. Yes, it is.
Q. And you're the sole employee of Fleming Associates, correct?
A. Yes, I am.
Q. So if information was provided by Fleming Associates, it was provided by you personally?
A. Yes.
Q. Okay. Would you turn to page 56. And tell me when you're there.
A. I'm there.
Q. You see the third item that begins with the word adjacency?

A. Yes.
Q. And the first sentence reads "adjacency restrictions however have become substantial restrictions on Palco's ability to harvest timber." Do you see that?
A. Yes.
Q. Do you agree with that statement?
A. I think it's certainly a consideration that has to be taken into account.
Q. Did you -- did you express that view in 2005 to the noteholders?
A. I don't recall.
Q. The next sentence reads and I quote, "the severity of these adjacency restrictions resulted in major part from Palco's aggressive timber harvest program which was designed essentially to harvest annually as much timber as Palco could in compliance with the HCP interim restrictions." Do you agree with that statement?
MR. SHIELDS: Excuse me for just a moment. Your Honor, I object to detail questioning of the content of the 70 or 80 page report which may include some data from Fleming Associates. It says it does, but he's not laying a predicate that the portions of the report that he's questioning the witness about are ones that relate to Mr. Fleming's work and Mr. Fleming said at the outset he scarcely recognizes the document. So I object on lack

of foundation. And he asks about particular portions of the report that he established they had something to do with Mr. Fleming's involvement in this work.
THE COURT: All right. I'm not sure whether you were just giving Mr. Fleming instructions or making an objection, but in any event, I think that he certainly is capable of defending himself. I mean, you shouldn't -- I mean, when you read the report, you should -- I mean, you don't remember the report, but you shouldn't take from his question the notion that everything in it is yours. I don't know. What's the number of this report?
MR. SCHWARTZ: Exhibit 70.
THE COURT: 70, and it's called?
MR. SCHWARTZ: MMX Exhibit 70, MRC/Marathon Exhibit 70.
THE COURT: It's a thing that's titled Scotia Pacific presentation election of information contained in original draft of presentation that's been redacted. No, that's not the title. I don't know.
MR. SCHWARTZ: It was a presentation to counsel of the -- then counsel for the noteholders.
THE COURT: All right. So in any event, I don't know if you're confused or not, but ask your questions.

Q. (By Mr. Schwartz) Well, I read the sentence into the record and the question I had for you is whether you agree with that sentence.
A. Well, the adjacency restrictions are temporary and this is a 2005 report. So I don't know what -- the status is going to be different today than it was in 2005.
Q. Do you know what the status of the adjacency restrictions are today?
A. The restrictions are the same, but the on the ground circumstances, I'm sure, are different.
Q. And did you look into that in determining the harvest rates to use in your model?
A. I considered the adjacency restrictions, yes.
Q. In the way you described earlier?
A. In my analysis.
Q. Can you explain what age class distribution means?

A. I assume you're referring to the distribution by age class.
Q. It means that there are trees of different ages and you have to take that -- those into account, don't you, in determining whether they can be harvested?
A. Well, I don't understand the question.
Q. Let me try it this way: What is the earliest

57

you can harvest a redwood tree? At what age?
A. I would say generally, depending -- this is a commercial thin, commercial thinning?
Q. Yes.
A. I don't know. You probably wouldn't thin much more than about ten years.
Q. What if you were clearcutting?
A. You're clearcutting?
Q. Yes.
A. You would probably be 50 years or so, depending on the site.
Q. And part of your model includes some clearcutting, does it not?
A. Yes, it does.
Q. Okay. Did you consider in your analysis the ages of the trees on the Scopac property in determining the amount that you say can be harvested in your model?
A. In the clearcut you would cut all the trees in that unit, regardless of age.
Q. I'm not talking about just the clearcutting. I'm asking you, in doing your analysis and your modeling and coming up with the 81 million board feet number, you considered the ages of the trees on the Scopac property?
A. Not specifically.
Q. Did you consider it generally?

58

A. No.
Q. Now, in the first nine years, I believe, your model provides for a clearcutting over 16,000 acres in each year, correct?
A. In my model, I estimate how much area would be clearcut, but I don't really specify how much would be harvested selectively.
Q. And clearcut is 16,000 acres in each year, correct?
A. No.

Q. Okay. How many acres do you propose to be clearcut in the first -- in each of the first nine years in your model?
A. It's, I believe, on average it's 1678 acres.
Q. 1600?
A. 1600 per year on average.
Q. And those trees would have to be, at least the redwood ones would have to be at least 50 years old to be clearcut?
A. They would probably be, yes.
Q. Now, if you would, again, turn to your proffer, paragraph 33. Do you have that?
A. Yes.
Q. And do you see that based on your conclusions, you estimate that 33.7 million board feet -- I'm sorry,

thousand board feet per acre will be harvested in each year?
A. I'm sorry. What page again?
Q. Paragraph 33 on page 9.
A. What's the question again?
Q. Can you explain what the 33.7 number is in the fourth line in paragraph 33.
A. That would be the average volume, net volume of merchantable timber on the acres that I assigned to the no restrictions class.
Q. So that would be the volume that you propose to be harvested per acre in each of the first nine years, correct?
A. No.
Q. Explain why not.
A. That's just the average, total volume divided by the acres that I assigned to the no restriction class for the entire property.
Q. What is the volume per acre that you propose to harvest in your model?
A. That would -- that would vary by watershed assessment area.
Q. I'm asking for the total. Do you know the total?
A. I don't know the total.

Q. Is it in your report? Or your proffer?
A. I don't believe so. I probably can calculate

it.
Q. Do you know how it compares to the volume that was being harvested by the company over the last few years?
A. No.
Q. Would you turn to page 36 of your report. Do you have it?
A. Yes.
Q. Can you explain what table 9 is?
A. That's a summary of the average annual harvest for the first nine years by species and watershed assessment areas or WAA, W-A-A.
Q. And the first area that you have is Humboldt Bay, correct?
A. Yes.
Q. Okay. And that is the Freshwater and Elk watersheds; is that correct?
A. Yes.
Q. And you're aware that there are restrictions on the harvesting in the Freshwater and Elk watersheds, correct?
A. There are restrictions on -- yes.
Q. And you propose to harvest in each of the first

nine years approximately 29 million board feet from those watersheds, correct?
A. That's correct.
Q. Do you know what the company has been able to harvest over the last few years from those watersheds?
A. Not specifically. I have seen some data.
Q. Did you consider that in determining that under your model 29 million board feet could be harvested from those areas?
A. No, but it seemed to be in line with what they have been harvesting.
Q. Are you aware that the company only harvested 17 million board feet from those areas in 2007?
A. That's not consistent with the number that I have in my mind, but I'm not -- I think it was higher in 2007. It might have been lower in 2006.
Q. What do you think it was in 2007?
A. I believe it was in mid 200's -- mid 20's.
Q. We'll have the opportunity to ask the people from the company when they take the stand.
Now, in year 10 of your model, which is the

last year you used, you jump from 81 million board feet to 100 million board feet; is that correct?
A. That sounds reasonable.
Q. What was the basis for your determining that

ten years from now 100 million board feet could be harvested from this property?
A. For that -- for the tenth year and for my future years, I base my analysis on assuming that you would be able to harvest 100 percent of the growth on the lands that were classified as partial or no restrictions. I did not assign any harvest -- any percent to the land, the volume that was in the no restrictions class. And I did this in order to form a stabilized income into the future.
Q. Is there a calculation somewhere in the report that demonstrates how you came to the 100 million board feet figure?
A. I spell out what I did in that analysis, but I don't know that I actually have a table that develops that calculation.
Q. You spell what you considered, correct?
A. Excuse me?
Q. You spell out what you considered?
A. Yes.
Q. But not the calculation or the analysis?
A. I make it clear what I did.
Q. In coming up with the 81 million and 100 million, did you do any analysis to determine if those harvest levels would comply with the various government

regulations such as the HCP and watershed restrictions?
A. I believe that they do.
Q. What did you do to reach that opinion?
A. I have allocated the volumes to various harvest classes based on provisions of the HCP. I have -- I looked at other details. For instance, these are volumes less than what is -- it's certainly less than what is permitted under the current option A that the company is operating under.
Q. What about the restrictions imposed by the water boards, did you consider those?
A. Yes.
Q. Okay. And is that demonstrated anywhere in

your report where you show reductions for any environmental limitations imposed?
A. Those analysis were -- were included in my backup, not in the report.
Q. Not in the report. Now, on what basis did you conclude that in year ten you could clearcut areas in the partial cut areas?
A. That's not what the report says.
Q. Okay. Let me ask you this way: In your report, do you presume that beginning in year 10 you can clearcut portions of the partial cut areas?
A. No.

Q. Would you turn to page 31 of your proffer. I'm sorry, paragraph 31 of your proffer.
THE COURT: Page 8.
Q. (By Mr. Schwartz) I'm sorry, I'll come back to that because that's not the right paragraph, so I'll come back to that.
You assumed a growth rate -- before we get to the growth rate, would you turn back to Exhibit 70.
A. I'm sorry, I don't have any numbers.
THE COURT: It's the last one in that book.
MR. SCHWARTZ: The 2005 communication.
THE COURT: Oh, you handed him a copy of it?
MR. SCHWARTZ: Yes.
A. What page?
Q. I believe it's page 25. Yes, page 25. Do you have it?
A. Either I messed this up or it got messed up before it got here.
MR. SCHWARTZ: May I approach, Your Honor?
THE COURT: You may.
Q. (By Mr. Schwartz) Do you have page 25 in front of you?
A. Yes, sir.

Q. And this is a proposed harvest plan for the Scopac properties, is it not?
A. Yes.
Q. Did you provide information in 2005 for the production of these proposed plans?

A. Yes, I would.
Q. Did you actually prepare -- did you actually determine what numbers for the volume harvested should be on this -- in this plan?
A. I haven't seen this document for a long time. I know that I did help Houlihan Lokey prepare data for this report.
Q. Okay. And the first nine years in this report are pretty similar to the first nine years in terms of harvest level in your current appraisal, correct, slightly higher, but not much?
A. It appears that way.
Q. Now, in the tenth year in this report, Exhibit 70, it provides for 91 million board feet. Do you see that?
A. Yes.
Q. Do you have any understanding as to why it is that only 91 million was proposed two years ago and now you're proposing 100 million?
A. Well, there was quite a few changes that were

made between the date in 2005, and I don't remember the date that we're talking about.
Q. Well, it's dated September on the front.
A. September, all right. Did I know that the volumes changed? There was harvesting that went on. And I did not look back to the 2005 data for an appraisal. So I may have -- I had just different data.
Q. And from the company's perspective, the harvest amounts have actually gone down since 2005, correct, the company's actual harvest?
A. I don't know.
Q. Now, you used an average growth rate for the trees, for young growth redwood of 3.75 percent, correct?
A. Yes.
Q. Did you consider or use different growth rates for different types of trees?
A. No.
Q. Why not?
A. I analyzed the data that I had and it appeared that the growth rate was relatively similar for all the species, so I just used the one rate.
Q. Would you look back at the document we were just looking at, the September 2005 report. And particularly page 22. Hopefully you can find that page

easier. If not, I'll help you.

A. It's really a mess. They're not even in the right --

THE COURT: There's a black book. Let's keep this one. Here's another one. Is it clipped together?

MR. SCHWARTZ: Yes.

Q. (By Mr. Schwartz) Page 22. Do you have page 22?

A. Yes.

Q. The first sentence reads, "the annual growth rate of the Scopac timberlands is highly dependent on the age class of the timber." Do you see that?

A. Yes.

Q. Do you agree with that?

A. Growth rates will vary by age class.

Q. And you used the same growth rate for all age classes in your report, correct?

A. Yes.

Q. I want to talk a little bit about the discount rate that you used. You used a nominal rate of 9 percent, correct?

A. Yes.

Q. And your inflation rate was 2.75 percent, correct?

A. Yes.

Q. So your real discount rate was 6.25 percent, correct?

A. I did my analysis on a nominal basis, but your math is correct.

Q. But to calculate a real discount rate, you take the nominal rate and subtract the inflation rate, right?

A. That's commonly done, yes.

Q. Okay. How did you determine that the 6.25 percent was the appropriate real discount rate to use?

A. I did not use that, I used the 9 percent nominal.

Q. How did you determine that the 9 percent nominal rate was an appropriate rate to use?

A. That was based on my analysis.

Q. What factors did you consider?

A. In this regard, I started with an alternative

investment opportunities, primarily bond market. And my primary starting point would be the VAA bonds.
Q. Did you consider anything else other than the corporate bond rate?
A. I considered lots of things in my analysis.
Q. What else did you consider in coming up with the discount rate that you used?
A. I adjusted that bond rate as of the effective date of value for other considerations such as the size

of the property, the liquidity issues, the burden of management, the aspects of government and regulatory issues, presence of the HCP, the length of the projection period, and a host of other factors.
Q. Let's start with you used alternative investments of the corporate bond rate, correct?
A. Basically.
Q. That's where you started?
A. Basically.
Q. Did you consider any other alternative investments?
A. I looked at other -- I have a table that showed T-bills and other corporate AAA bond rates, but I usually start at the VAA bond level.
Q. Can you tell me what page that table is in your report?
A. I believe it's on page 46, table -- sorry.
Q. Is that the table on page 53?
A. That's the table on 53.
Q. Thank you. So you considered, based on table 18 on page 53 you considered the corporate bond rate, treasury securities and the prime rate, correct?
A. Primarily.
Q. Did you consider any other alternative transactions other than those?

A. No.
Q. You didn't consider any other timber transactions?
A. No.
Q. You didn't consider any real estate REITs?
A. No.
Q. You didn't consider any timber REITs?
A. No.

Q. Okay. And then after your alternative transactions, you adjusted, I take it from your testimony, for the things you mentioned, size, liquidity, burden of management and so on and things you just talked about, correct?
A. These are items I considered, yes.
Q. And did you make adjustments to the alternative transactions based upon those factors?
A. I'm sorry?
Q. Okay. Well, you started with the alternative transactions, right?
A. Yes.
Q. And if I understand what you're saying, you came up with a possible discount rate using those alternative transactions on page 53 of your report and then I think what you're saying is you made adjustments for these other what I would call more subjective

factors; is that correct?
A. I consider all these elements in my final conclusion with regard to the selection of the discount rate.
Q. Can you -- is it in your report or can you tell the Court what adjustments you made for these other factors in coming up with your discount rate?
A. I made -- initially I may have added some -- an estimate of what certain elements might contribute to that rate, but in my final analysis, I really don't have any specific adjustments for each individual category or consideration.
Q. So you just took -- you took the discount rate that you came up using the alternative transactions and then just came up with, based on your subjective judgment, what, if any, adjustments to make but you didn't explain all that in your report?
A. No. This is an ongoing process. The discount rate is very important in the analysis and I'm considering this rate throughout my process. And I probably consider myself a tinkerer. And I'm never really happy -- I kind of play with numbers all the way to the end of the process.
Q. But whatever changes you made are not reflected in the report and you can't articulate any specific

changes here today?
A. Changes to what?
Q. From the alternative transaction to get to your final discount rate of 9 percent nominal.
A. The total, I guess, would be the sum of the difference between the 9 and I believe it's 6.68 percent.
Q. Right. But what I'm asking you is how you got there. And if there's any way any of us sitting here can figure that out by looking at your report or listening to your testimony, and I take it the answer is no.
A. There's a whole lot of things being considered in that analysis and I don't allocate that total change by category, no.
Q. Now, you made a comment before that the discount rate is important. What impact would a one percent change in the discount rate have in the total valuation?
A. I don't know.
Q. Can you estimate?
A. No.
Q. Would you agree that the regulatory environment in Northern California has a negative impact on the cash flow of Scopac?
A. I considered aspects of the -- of these sorts of allocations -- this sort of conditions on the

allocation -- by allocating the merchantable volume by various harvest classes.
Q. That wasn't my question of what you considered. My question was: Would you agree that the regulatory environment in Northern California has a negative impact on the cash flow of Scopac?
A. It certainly -- the regulatory atmosphere presents to the cost of timber harvesting plan. It's expensive.
Q. And that reduces --
A. And that would impact the bottom line, yes.
Q. In a negative way?
A. It doesn't add anything to it.
Q. Let's talk briefly about the MMCAs. You estimated a $16 million value for the MMCAs; is that correct?
A. I consider -- I really come to a conclusion of a market value for the entire property. I do analyze the MMCA separately from what I call the commercial

timberlands, but I don't really come in with -- I don't really form an opinion with regard the market value of the MMCAs separately.
Q. Did you or did you not place in your report and in your proffer a number of $16 million for the MMCA?
A. I developed a contributory value of $16 million

and $15.1 million that the MMCAs would contribute to the market value of the entire property.
Q. Are you suggesting that if you were valuing just the MMCAs and not the commercial timberlands, the value would somehow be different than the $16 million in your report and proffer?
A. Not necessarily, but that's -- my opinion of value is relative to the entire property, sold as a single entity.
Q. But you don't think it would be different if you did it separately?
A. I didn't do that analysis.
Q. I understand what you're saying. I'm asking you if it would be different?
A. I don't know.
Q. You don't know. Okay. Now, did you do an evaluation of the MMCAs in July of 2007?
A. Yes. A preliminary estimate of value, yes.
Q. And what did you conclude the value was at that time?
A. I don't really recall but I think it was around $14 million.
Q. And you submitted an affidavit to the Court, did you not, with that valuation in it?
A. That was a preliminary estimate value at that

time based on those conditions, yes.
Q. Okay. Have the conditions -- did the conditions of the MMCAs change from July of 2000 to October of 2000?
A. Yes.
Q. How did they change?
A. I think I reduced the -- for one thing, I reduce the delivered log values.
Q. Now, maybe you misunderstood my question. My question was: Did the condition of the MMCAs, the property itself, change in any way between July 2007 to

October 2007?
A. Yes, there have been some growth.
Q. Okay.
A. In the young growth timber.
Q. And that growth cannot be harvested for about 42 years, correct?
A. 41 or 42.
Q. And between July and October, you concluded that that was approximately a $2 million increase in the value of the MMCAs?
A. The July estimate was as of July and it was a preliminary review. And that's the difference, yes.
Q. But that was your testimony to the Court in July that it was $14 million, correct?

A. At that time. Again, that was a preliminary estimate.
Q. Now, in your proposal for the MMCAs or your model for the MMCAs, do you propose to cut any old growth redwood in 41 or 42 years, whatever the date is?
A. Yes.
Q. How much?
A. I would have to look at my report as to how -- I probably have it in there. I don't recall.
Q. Okay. And do you know if it would be consistent with the environmental regulations to cut the old growth redwood?
A. It would be consistent, yes.
Q. Do you know if it's environmentally sound to cut the old growth redwood?
A. It would be environmentally sound, yes.
Q. Did you do any analysis to -- well, let me step back. Part of your model provides for clearcutting portions of the MMCAs in 41 or 42 years from now, correct?
A. After the HCP has terminated.
Q. Now, isn't it true that the HCP, there will be a new HCP, it won't just go away, there will be a revised one in some form, correct?
A. I don't know that.

Q. Isn't that consistent with the way the property has been operating the way the California regulations work?

A. The HCP is a very complicated document that was negotiated as part of the Headwaters agreement. I have no idea what will happen 41 years from now with regard to those lands.
Q. And you think the regulators will allow for clearcutting of portions of the MMCAs?
A. I don't know.
Q. But you provide for that in your model?
A. I analyze the property as though the HCP was no longer in place in the same way that I analyze the property for my appraisal.
Q. Let me talk briefly about the mill and its role in the valuation. Did you consider at all what would happen in terms of Scopac's cash flow should the mill shutdown for any significant period of time?
A. I appraised -- I appraised the property under the conditions that were in place in October 1, 2007.
Q. When the mill was operating?
A. When the mill was operating.
Q. Okay. Now, if the mill for any reason ceased to operate or was shutdown for a lengthy period of time, would that have an impact on the value of the property,

of the Scopac property?
A. I didn't analyze that aspect.
Q. I understand you didn't do that. I'm asking you sitting here today if you have an opinion as to whether if the mill was shutdown for any length of time it would impact the cash flow and therefore the value of the Scopac property.
A. It would certainly change the dynamics of the local area with regard to the demand for timber sold in the open market. It might be short-term, it might -- all kinds of circumstances could occur.
Q. And the most likely result is a reduction of the value of the Scopac property, correct, due to reduced prices and increased cost to get the logs to a mill?
A. I don't know. I did not do that -- I wouldn't necessarily agree with that, no.
Q. You would not?
A. I just don't agree because I haven't done that and some of the logs go to other mills that are easier to get to their mill than it is the Scopac mill.
Q. Do you know what percentage of the Scopac timber is sold to Palco currently?

A. My impression, because of the new master purchase agreement, is 100 percent.
Q. So Scopac timber doesn't go to any other mill,

it goes to Palco?
A. I believe so. I -- I believe so.
Q. Now, I want to walk through a few sections of your proffer where you discuss Mr. Lamont's report. And I believe it begins on page 18 of your proffer in the section that begins Roman Numeral II. Do you have that?
A. Yes, I do.
Q. Now, let me first ask you, this section II that goes on I believe to page 30, did you write all of that yourself?
A. Yes.
Q. Is there any reason it's written in the third person when the rest of the proffer is written in the first person?
A. I just started that way and I just -- it was just easier than saying LaMont, your views and I, so I just left it as Fleming.
Q. Now, let's start with the bottom of page 18, item 3(b), and do you see that you have a criticism of Mr. LaMont that he is not harvesting Doug Fir and that you believe that that's not realistic in the long-term. Do you see that?
A. Yes.
Q. Okay. Now, is it true that in Mr. Lamont's model he doesn't harvest Doug Fir in the long-term?

A. He logs some Doug Fir.
Q. Okay. And in fact, so then what is the criticism that you are articulating in 3(b)?
A. I am just raising the observation that he varies the portion of Douglas Fir that he's harvested substantially and making those estimates that are substantially different than the percentages that are out there in the woods in a natural way.
Q. But you were here when Mr. LaMont explained how he calculated the various harvest levels, correct, and how Doug Fir, the growth changes over time?
A. My observation, he tends to skew the portion of Douglas Fir that could be harvested over his projection time, projection period.

Q. Is it economical in the current market to harvest Doug Fir?
A. Yes.
Q. Do you know if the mill, the Palco mill, is currently milling Doug Fir?
A. I believe it is not.
Q. Do you know why it's not?
A. No.
Q. It's not because it's not economical, correct?
A. Well, some mills are cutting Douglas Fir in the local area.

Q. But the Palco mill is not?
A. That's their decision.
Q. And you haven't asked anybody why that's their decision in doing your model and determining how much Doug Fir should be harvested?
A. Not specifically.
Q. Now, the prices for Doug Fir are at an all-time low right now, correct?
A. For young growth, the young growth material they're low, yes.
Q. At an all-time low?
A. I don't know that they're all-time low.
Q. How about in the last 20 years?
A. I haven't made that comparison.
Q. Last ten years?
A. I haven't made that comparison.
Q. Now, let's turn to page 20 of your proffer. Actually, it's the bottom of 19 and it carries over to 20, 2(b) on the bottom of 19. Can you just read that 2(b) to yourself and tell me when you're done.
A. (Witness complies.) Yes.
Q. What drastic measures are you referring to in that sentence?
A. I believe I'm really referring to his significant drop in the harvest of Douglas Fir in his

runs 2 and 3 that's quite a bit different than the current percentages of each species in the forest.
Q. And the percentage of each species in each forest change over time, correct?
A. They can, but there's -- they're within a fairly narrow range.

Q. How do you know that?
A. I haven't made any comparison, but I've been involved with properties over the last 35 years, and that's my conclusion, that the species mix generally stays relatively constant.
Q. And are you aware that the modeling done by other experts in this case show something to the contrary?
A. Yes, and I have a problem with some of those models.
Q. Now, just going back to Doug Fir for a moment, do you know what the costs are to harvest Doug Fir?
A. I have an estimate cost.
Q. And what would that be?
A. When you say "harvest," what are we focusing on?
Q. Cost of all land, harvest, logging, hauling?
A. Yes.
Q. And what is your estimate?

A. For this property?
Q. Yes.
A. I believe I -- without looking, I believe for the commercial timberlands I use a harvest cost on average of $209, I believe. Let me check that.
Q. That is the number for the average in your report, but I was asking something different. I was something specifically for Doug Fir. Is it different?
A. I don't do -- my analysis relates to all the timber on that unit, not -- it's not species specific.
Q. I'm just asking you if you know from your experience. I understand it's not in your report. What current cost would be to harvest the Doug Fir on the property?
A. It would be impossible to come up with an average other than what I have done here specifically for this property.
Q. Have you -- now you interviewed some local log buyers and sellers to come up with some of the information in your report, right?
A. Yes.
Q. Did you talk to them about the prices and costs for Doug Fir?
A. Mostly about the current log prices.
Q. Okay. But not about the costs?

A. I did ask about whole costs generally, but they didn't refer necessarily to Douglas Fir specifically.
Q. Isn't it correct that it would cost approximately $400 to $450 for logging and costs of all land for Doug Fir at the current market, and that the current market price is less than that?
A. No.
Q. You don't -- what is the current market price for Doug Fir?
A. The current market -- what do you mean current, today? I haven't done an analysis.
Q. In the last few months?
A. I have not done that analysis.
Q. So how do you know if the costs are lower than the price?
A. I didn't agree with that. Start over.
Q. Do you know -- let me put it this way: Do you know if the costs to harvest Doug Fir are more -- are more than the prices you could sell the Doug Fir for?
A. As of October --
Q. No. In today's market.
A. Are you harvesting by tractor or are you harvesting by helicopter?
Q. By the most economical means possible.
A. I haven't done that analysis but I would assume

that it's still a positive number.
Q. But you don't know why the mill is not doing it, if it's a positive number?
A. Why Palco is not cutting Douglas Fir?
Q. Right.
A. No. As I indicated earlier, I don't know why they decided not to cut Douglas Fir.
Q. Let's go back to your proffer and your discussions about Mr. LaMont. Let's look on page 20, 3(b). We started discussing this and then I interrupted us and I want to come back to it. 3(b) on page 20 of your proffer. You say that naturally occurring mix of species is a more probable combination for appraisal purposes, correct?
A. I see where you are. Yes.
Q. You agree with that statement?
A. Yes.

Q. Is it your view that Mr. LaMont did not take into account the natural occurring mix of species?
A. In reviewing his three runs, it seems like he was skewing the distribution of Douglas Fir and Grand Fir in run 2 and run 3.
Q. How about in run 1?
A. Run 1, as I recall, was a little more balanced. I'd have to check.

86

Q. Now, is it correct that as you harvest and depending on the amount you harvest, the species mix on the property will constantly change?
A. To some extent, possibly.
Q. Okay. And did you factor that into your analysis?
A. My analysis is different than Mr. Lamont's.
Q. I understand. Did you take account for the changes in species mix over time on the property in coming up with your harvest rates?
A. I used, for instance, in my tenth year I use growth as a way of developing the estimate in my harvest level. And hence, I applied the growth to the existing distribution of species at that time.
Q. Did you apply different growth rates for different species?
A. No.
Q. But they do grow at different rates, don't they?
A. In the review of them, the data that I had, they basically were about the same. So for this appraisal, I used the same rate for all species.
Q. And if you were to harvest 30,000 acres of redwood and you did a clearcut, let's say you did a clearcut of it, now, you couldn't harvest that redwood

87

now for another 40 or 50 years, correct?
A. Is this a hypothetical?
Q. Yes.
A. Because you're not going to find 30,000 acres of just redwood.
Q. Yes.
A. So you're hypothetically saying, okay, here's a stand out there that's all redwood, that's never going to happen.

Q. Okay. Let's use a hypothetical that you can accept then. Let's say, would it be fair to say that you had a stand of trees that was 90 percent redwood?
A. I'm not even sure that's reasonable. I would say something closer to 70.
Q. Okay. Let's take that example. 70 percent redwood. And you clearcut it. All right. That's going to change the species mix on the property, right?
A. No.
Q. It's not?
A. No.
Q. Why not?
A. Because that's what -- that's the current mix.
Q. But the mix is going to change over time, correct, as you harvest and as there's growth, it's going to change?

A. Well, if I start with 70 percent and I cut 70 percent, I still have 70 percent.
Q. Okay. We'll leave it there. Do you know what non-declining even flow means?
A. I guess it means a stabilized number, stabilized harvest.
Q. Are you guessing or do you know?
A. I don't know. I'm just trying to understand the words.
Q. Okay. So it's not a term you're familiar with?
A. I've heard the term.
Q. But you don't have a real understanding of what it means?
A. Well, it sounds like you're talking about a sustained level.
Q. If you could turn to page 21 of your proffer. 1(c) at the top, you say if Mr. Lamont's harvest levels were adjusted to incorporate an appropriate growth rate, his valuation would increase and would likely be near your valuation. Do you see that?
A. Yes.
Q. Did you actually do that analysis?
A. No.
Q. Turn to page 24 of your proffer.
A. Let me stop you. I'm trying to understand

exactly what I was focusing on. This is 1(c)?

Q. Yeah.
A. I think I did -- I did adjust or add some -- adjust the -- we're talking about the first couple of years?
Q. Well, you wrote it, you tell me.
A. I know. I'm trying to understand what I -- I believe I did make estimates based on higher percent -- growth rates at higher percents and they tended to be similar to some of my conclusions.
Q. Is that shown anywhere in your proffer or in anything you provided to us?
A. I don't believe so.
Q. Okay. Let's turn to page 24 of your proffer. Under table 6 in talking about the discount rate. Do you have that?
A. Yes.
Q. You say that the discount rate selected by LaMont is comparatively low, do you see that? The heading of number 1.
A. Oh, I see. The heading, yes, I can see it, yes.
Q. Isn't it a fact that Mr. Lamont's discount rate was higher than yours?
A. Well, I'm saying it's comparatively low because

I use a ten-year projection period and they use -- and he uses a 50-year projection period.
Q. The sentence reads "the discount rates selected by LaMont and Yerges is comparatively low."
A. Yes.
Q. Did Mr. LaMont use a higher or lower discount rate than you?
A. To me it's comparatively low because I'm only using a ten-year projection period. It should be higher.
Q. Your discount rate in real terms was 6.25 percent, correct?
A. Yes.
Q. And Mr. Lamont's was 7 percent?
A. Yes.
Q. I just want to touch briefly on a sales comparison approach you testified on direct about. And you testified when Mr. Shields was asking you questions that the sales -- the other company sales that Mr. LaMont used were not comparable. Do you recall that?
A. Yes.

Q. What analysis did you do of those individual sales to reach that conclusion?
A. I collected data about the sales. I've inspected some of them. I knew about some of the others. And I reviewed them the best I could with the data that I

91

had.
Q. Can you be any more specific on what you -- let me ask you this: When did you do that analysis?
A. I think I initially worked on some of that back maybe in August and September 2007.
Q. You didn't have Mr. Lamont's report in August or September of 2007, right? His report was issued in March of 2008.
A. No, I'm just talking about what I did.
Q. I'm asking you -- sorry if I confused you. My question is: The comparable sales that Mr. LaMont used in his report, you testified on direct this morning that those, in your opinion, were not comparable to the current Scopac property; is that correct?
A. That's correct.
Q. Okay. And I want to know what analysis you did of those sales to reach that conclusion and when you did it.
A. I had those sales before I had Mr. Lamont's appraisal.
Q. All of them?
A. We're talking about California sales? The ones he used for his sales comparison approach?
Q. The ones he used for his sales comparison approach that you testified on direct today were not

92

comparable.
A. I believe I had them all, yes.
Q. So you knew about those sales before?
A. Yes.
Q. And what about those sales were not comparable?
A. Well, each sale is different. Some of them -- it's because of date of value, some of it was because of size, some of it was the volume.
Q. And Mr. LaMont made adjustments for those criteria in his report, correct?
A. Yes.
Q. Okay. Now, if you had that information back in

2007, is there any reason that you did not -- let me ask it to you this way.

You contend that Mr. LaMont arbitrarily, to use your own word on page 28 of your proffer, applied a 25 percent downward adjustment for the HCP. Do you see that?

A. What page are you on?

Q. Page 28 of your proffer, item 7.

A. Yes.

Q. Do you know if any of those properties, any of those other properties were subject to an HCP?

A. Not at the time of sale.

Q. Is it your view that no adjustment should be

made for the HCP?

A. I don't know. I didn't make that analysis.

Q. No, but you criticize Mr. LaMont for doing it.

A. I'm just saying he made an adjustment across the board. I'm trying to summarize what he did.

Q. Well, you called it arbitrary, so obviously you don't agree with it.

A. I don't agree. He did not support his adjustment of 25 percent downward, a negative 25 percent adjustment.

Q. Do you think any adjustment would be appropriate for the fact that the Scopac property is subject to an HCP and the other properties in the comparable sales approach were not?

A. I have not reviewed it specifically, but I have certainly taken into account the presence of the HCP in my valuation.

Q. You did not do a comparative sales approach, right?

A. No.

Q. So let's focus on my question. My question is: If you were doing a comparative sales approach and some of properties were not subject to an HCP and you were comparing it to the Scopac property which is subject to an HCP, do you believe an adjustment should be made

downward for the value to reflect the presence of the HCP?

A. I don't know which way the adjustment would be. I haven't done that analysis.

Q. But you concluded that Mr. Lamont's adjustment was inappropriate?
A. I concluded that it was arbitrary and not supported.
Q. Just a few minor points and then I'll let Mr. Doren who has been patiently waiting to ask you questions take the stand.
After you received the reports in March of 2008, did you ever request from anybody information regarding log prices, log costs, any other information to update for any purpose?
A. Excuse me? I don't understand the question.
Q. Okay. You received a report around March 14 of 2008, correct?
A. Talking about Mr. Lamont's report?
Q. Right. And all of the reports in this case were produced on March 14, 2008, correct?
A. (Witness nods his head affirmatively.)
Q. Okay. So what I'm trying to find out is what, if anything -- what, if any, information you have requested since that date with respect to the valuation

of the Scopac timberlands, if any?
A. I don't believe I've requested any. I may be --
Q. Okay. So just so we're clear, your value date is October 1st, 2007, correct?
A. Yes.
Q. And so when you say the property's value is $605 million, that's as of October 1st, 2007, correct?
A. That's my opinion and market value, yes.
Q. And you have done nothing to update your analysis to determine what the value of the property is at any later date, such as January through March of 2008, correct?
A. That's correct.
Q. Prior to issuing your report -- let me take a step back. Do you know who Glenn Daniel is?
A. Yes.
Q. Who is he?
A. He is the managing director of Houlihan Lokey.
Q. And he is one of the noteholders' experts in this case, correct?
A. Yes.
Q. And he also provided a valuation report with

respect to Scopac properties as well as other things, correct?

A. I believe so.
Q. Okay. Now, prior to issuing your report, how many meetings did you have with Mr. Daniel?
A. I didn't meet him before I issued my report.
Q. Prior to issuing your report, did you have any discussions with Mr. Daniel?
A. He may have been involved in a conference call.
Q. Did you ever discuss the substance of valuation of the property with Mr. Daniel prior to issuing your report?
A. I guess I don't really recall. I didn't meet him until after I issued my report, which would have been March 10th. I may have been involved in a conference call with him prior to that.
Q. Other than a conference call, any other discussions or meetings with Mr. Daniel prior to issuing your report?
A. No.
Q. Okay. Now, subsequent to issuing your report, did you have any meetings with Mr. Daniel?
A. No.
Q. Did you have any conference calls with Mr. Daniel subsequent to issuing your report?
A. I didn't have any one-on-one telephone calls but it may have been -- he may have been involved in a

conference call. I don't really recall.
Q. Okay. Do you have any recollection of discussing the valuation of the Scopac property with Mr. Daniel, whether it was in a group setting or one-on-one?
A. When?
Q. At any time.
A. I discussed aspects of my appraisal when I met him after March 10th when I finalized my report.
Q. And other than that, did you have any discussions about the valuation with Mr. Daniel?
A. I don't know what you mean by discussion. I talked to him this morning. I mean, you know --
Q. Other than that, other than this morning?
A. I've seen him. He was here yesterday.

Q. I'm just trying to understand if you had -- and I didn't think this would be so hard. But if you discussed your valuation with Mr. Daniel, let me try to narrow it, any time between issuing your report and issuing your proffer.
A. Yes.
Q. How many times?
A. I believe I met him on -- I'm trying to think back. On March 11th. I might have seen him again on March 10th.

98

Q. Okay.
A. I don't recall what meeting it may have been. There was a bunch of meetings and depositions in San Francisco during March. I probably saw him during that period of time.
Q. I'm only interested in discussions you had about valuation. So if you met and said hello and talked about the weather, I'm not interested in that.
A. I don't remember our conversations.
Q. But prior to issuing your report, you did not discussion your valuation with Mr. Daniel, right?
A. There may have been a conference call that he was involved with. But I didn't have any -- my report was -- I didn't have a final number or anything.
MR. SCHWARTZ: I have no further questions, Your Honor.
THE COURT: All right.
MR. DOREN: Your Honor, can I request a ten-minute break so Mr. Fleming can stretch, along with the rest of us?
THE COURT: Okay.
(A recess was taken.)
THE CLERK: All rise.
THE COURT: Be seated. Your shot.
MR. DOREN: Thank you, Your Honor.

99

Richard Doren on behalf of Scotia Pacific, L.L.C.
CROSS-EXAMINATION
BY MR. DOREN:
Q. Mr. Fleming, I will do my best not to repeat topic areas. If I do, I'll just touch on them and if Mr. Shields will do you the same favor, then hopefully you can relax over lunch. You're currently employed at

J.A. Fleming & Associates, correct?
A. Yes.
Q. And that's what, I think, you already testified to a sole proprietorship?
A. Yes.
Q. So there's no other appraisers that work with you?
A. No.
Q. No other employees?
A. No.
Q. And basically there are no associates of J.A. Fleming & Associates, you're the man?
A. I'm the man.
Q. And that's been the case since 1980?
A. Yes.
Q. Now let me show you, if I can, page 70 of your report. I believe it's appendix 1. And if you can turn to that as well. On Page 70, heading A says

"representative appraisal projects in Humboldt County for major projects only." Did I read that correctly?
A. I believe so.
Q. And these are the major appraisal projects that you have done in Humboldt County based on acres and perhaps volume of timber; is that right?
A. Yes.
Q. Now, outside of Humboldt County, you don't recall whether you've ever appraised any redwood properties or not, correct?
A. I think that was my answer earlier, yes.
Q. And if we can just look over the list a little bit, back in 1972 you were still in your apprenticeship, correct, working with another firm?
A. Yes.
Q. And so you assisted your employer with the appraisal of 3368 acres?
A. Yes.
Q. And in 1978 the second item when you were involved with the appraisal of the 26,544 acre plat, would that have been the same, you would have been working with your employer at the time?
A. Initially.
Q. And then in 1992 now, jumping ahead, I guess 14 years or so, there was an appraisal of 4468 acres located

primarily in Salmon Creek, correct?
A. Yes.
Q. And then six years later in '98 you did about 9500 acres. And then in 2000 there was about a 4790-acre tract of Doug Fir property in southeastern Humboldt County, correct?
A. Yes.
Q. In 2003, three years after that, you were involved in about 7300 acres and you had testified earlier that you had done some initial work for Scotia Pacific in this time frame. Did this have anything to do with that work?
A. Yes.
Q. And I noticed that the number 7300 doesn't quite match up with the 6640 that we've been throwing around here. Do you know why it doesn't? Do you know what additional acreage was involved there?
A. Yes.
Q. And what acreage was that?
A. The appraisal in 2003 involved a portion of what is called Grizzly Creek MMCA, Marbled Murrelet Conservation Area.
Q. And that was -- and that fell out, if you will, of the MMCA acreage ultimately? In other words, it was sold?

A. It was sold.
Q. In this work, that project was ultimately not completed, correct?
A. I didn't complete it.
Q. And you did not reach a final conclusion on value, correct?
A. Oh, no.
Q. You reached a tentative opinion that the value of the acreage was about $150 million based on current timber value, correct?
A. I don't really recall. It was 100 -- maybe slightly more than that, in that range, yes.
Q. $150 million, maybe a little more?
A. Yeah.
Q. And also that same year you appraised 691 acres near State Highway 36, correct?
A. Yes.
Q. And then you had a couple of projects in 2004

as well for 16,100 acres and 4700 acres. And then the tenth item you talk about a project involving a review and preliminary valuation of over 217,000 acres. Was that your work for the noteholders?
A. Yes.
Q. And so other than that 217,000-acre job, which is, of course, the Scotia Pacific property in 2005, is it

fair to say that the largest acreage area reflected on this list of the appraised projects in Humboldt County is the 26,544 acres that you worked on with your employer in 1978?
A. Yes.
Q. Now, you have been working as a consultant to Houlihan Lokey back in 2007, correct, last year?
A. Yes.
Q. And that had begun earlier than that, as we have seen in some of the documentation, correct?
A. Yes.
Q. And you collected information for them and answered questions they might have regarding timberland valuation, correct?
A. Acted as a forestry consultant.
Q. Fair enough. If they had questions for you about the area or about California law or about the property, you provided that information to the best of your ability?
A. I don't know about California law, but I answered whatever I could do to help.
Q. Now, did you help Mr. DiMauro come up with his valuation numbers in his September 2007 declaration?
A. No.
Q. Did he ever ask you if his numbers were

correct?
A. No.
Q. Did he ever ask you if his numbers were even reasonable?
A. No.
Q. Were you told in September 2007 that Houlihan Lokey was waiting for your appraisal so they could finalize their numbers?
A. I didn't have -- what appraisal are we talking about?

Q. Well, let's stay back in 2007. I'm speaking now of the September 2000 time frame. Did anyone from Houlihan Lokey ever tell you that they needed an appraisal from you before they could assign a value to the Scotia Pacific assets?
A. They never told me to give them an appraisal, no.
Q. In fact, you weren't asked to do an appraisal on the property until about January 2008, correct?
A. What property are you talking about?
Q. Again, the Scotia Pacific properties, the 210,000 acres.
A. I was asked earlier to do a preliminary analysis regarding the MMCAs.
Q. And you did that back in the fall of 2007,

correct?
A. Yes.
Q. But you have not done any appraisal work on the balance of the property, the other 203,000 acres, correct?
A. No.
Q. And you weren't asked to do any appraisal work on the balance of the acreage until earlier in -- until 2008, correct?
A. Well, I had been working on it, but I wasn't asked to do an appraisal until some time in July -- January 2008.
Q. And you were working on it because you assumed at some point they would ask, right?
A. That's correct.
Q. But they hadn't yet, right?
A. No.
Q. Do you know why no one at Houlihan Lokey or Fulbright & Jaworski asked you to check Mr. DiMauro's September 2000 opinions for reasonableness?
A. No.
Q. Now, did Houlihan Lokey have any role in the preparation of your current appraisal, your March 2008 appraisal?
A. No.

Q. And I think we've already heard they didn't review it before it was finalized, correct?

A. Correct.
Q. And you never told anyone at Houlihan Lokey what your numbers were going to be before you completed the report, correct?
A. No.
Q. Were they surprised by your results?
A. I don't know.
Q. You never really discussed that with them?
A. No.
Q. Now, Mr. Daniel at Houlihan Lokey, who you've met on one occasion, correct, in terms of sitting and talking about substance of your appraisal?
A. There was a meeting in San Francisco that ran 11th and 12th of March and I believe that I saw him on either one or both days.
Q. That was your first face-to-face with Mr. Daniel?
A. Yes.
Q. And you understood at that time that he was replacing Mr. DiMauro as Houlihan Lokey's testifying expert?
A. I wasn't sure what the status was.
Q. Now, at the time you prepared your report, your

appraisal report, were you aware of any indications of interest in the property received by Houlihan Lokey?
A. I believe there was some interest.
Q. Were you aware of the numbers, if you will, to indicate the amount involved?
A. I heard the number of one. I didn't really remember it, but I heard one. I did not hear one or the other.
Q. As you sit here today, do you remember which number you heard?
A. I heard something like 568 or 578.
Q. Did you ever hear about an indication of interest of $603 million?
A. Yes.
Q. And when did you hear about that?
A. Some time in February.
Q. So in February, you heard about an indication of interest for about $603 million, correct?
A. Yes.
Q. And then in March you issued your report with an appraised value of $605 million, correct?

A. Yes, but I -- yes.
Q. Now, you have a standard appraisal procedure that you follow when you're conducting the appraisal of the timberland, correct?

108

A. Yes.
Q. And you've been applying that process for your 35 years in the industry?
A. Yes.
Q. And as Mr. Shields discussed with you, you didn't apply the cost approach because you didn't consider it relevant to this particular type of asset, correct?
A. Yes.
Q. But when you can, it's preferred to use more than one approach to kind of get some parallax on your valuation numbers, isn't it?
A. It's preferred, yes.
Q. Now, in this case, you only used the income approach; is that right?
A. Yes.
Q. And you didn't cross check that with the sales comparison approach?
A. I did not do a sales comparison approach.
Q. And if I understood your testimony, you didn't do that because you didn't consider there to be truly comparable properties out there for you to do a sales comparison approach with, do I have that right?
A. I didn't feel like the analysis would produce a relative -- a reliable indicator of value.

109

Q. And one of the reasons was because of the size of the Scopac properties?
A. One consideration.
Q. And was another consideration the fact that Scotia Pacific properties had a substantial amount of merchantable timber while most of the potential comparables had been cut over?
A. That's a trade I would consider.
Q. And you did consider when you were evaluating properties for comparability, correct?
A. Generally, yes.
Q. And another factor was that Scopac's property included redwood, correct?

A. It's a feature.
Q. And in your opinion, that makes the property unique?
A. Certainly different.
Q. Now, redwood is more rot resistant than other species, correct?
A. It's my understanding.
Q. And it's also your understanding that redwood is reportedly more fire resistant than other species, correct?
A. Well, other local species.
Q. Fair enough.

A. There can be other species out there.
Q. Fair point. For Northern California and the surrounding region?
A. That's what I'm referring to.
Q. Redwood also tends to grow faster than other species, again, in the region?
A. Oh, I don't know that that's true. It depends -- there's a lot of variables involved.
Q. It can change from location to location even within a particular property?
A. Sure.
Q. Depending on the micro climate, if you will, for one factor?
A. Yes.
Q. Depending on the age of the tree is another?
A. Yes.
Q. And depending on whether it's a cultivar or a natural redwood for yet another?
A. I don't know as much about cultivars as far as whether they are really faster but supposedly they are superior, yes.
Q. Do you know cultivars if I refer to them as trimmings?
A. I'm more familiar with them as cultivars.
Q. Okay. And you're not familiar with the use of

regression analysis to adjust sales for comparability, correct?
A. I would not use it in this circumstance. Apparently sometimes it is used in mass appraising that maybe a city appraiser might use when he has a lot of

data.
Q. Well, you recall when we spoke a few weeks ago you told me that you have no opinion on whether or not regression analysis is an acceptable method of adjusting sales for comparability, do you recall that testimony?
A. Not particularly.
Q. Why don't we take a look, if we can, please -- I've set your deposition right up there to your left. And if we could just look, please, at page 50, line 24. And specifically, Mr. Fleming, the question is: "Do you have any opinions on whether that" -- and that refers to regression analysis -- "is or is not an acceptable method for adjusting sales for comparability?" And turning to page 51, line 1, what was your answer, sir?
A. I said no at the time.
Q. And have you formed such an opinion since then?
A. No, but I certainly don't use it. I don't know anybody else that does use it other than somebody in this case.
Q. You know of -- outside of this case, you know

of no other appraisers who have used regression analysis to adjust, if you will, for comparability?
A. Not that I know personally. As I indicated earlier, it seems like it may be a way that is used when you have a lot of data in similar properties in a general way. But I'm not familiar with how that -- how good those estimates are.
Q. Okay. But, again, you personally are not aware of other appraisers using regression analysis?
A. No.
Q. Do you use any sort of a computer model or software in your appraisal work?
A. I think I referred to earlier I use Excel.
Q. And I think I asked, that's the thing that does the math for you, right?
A. Just like other models, they do the math for you.
Q. So an Excel spreadsheet is just like Options, for example?
A. I'm not familiar with Options.
Q. Okay. And do you use any computer modeling to help project tree growth?
A. No.
Q. Do you use any computer models to project

annual harvests?

113

A. No. I use my own method.
Q. Do you use any computer models to select locations for harvests year over year?
A. No.
Q. Have you ever used any sort of computer model or software in any appraisal project?
A. Other than --
Q. Other than your Excel spreadsheet?
A. No.
Q. And by the way, have you seen Mendocino Redwood's model? Have you seen that document?
A. No.
Q. Okay. Do you know if they use an Excel spreadsheet as well?
A. From Mr. Dean's testimony yesterday, it sounds like he kind of did.
Q. That's what I thought. Let's talk now briefly about the income approach. You used the January 1, 2007 inventory information that you got from Scopac, correct?
A. Yes.
Q. And then you adjusted that for harvests and for growth up to October 1, 2007, correct?
A. Yes.
Q. And you have no opinions one way or the other on the accuracy of the timber inventory information that

114

was provided to you by Scopac?
A. Well, I use the data that they provided. I had worked with their foresters in the past and I didn't have any reason to believe that there was something askew there.
Q. Sure. So based on your -- please.
A. I was comfortable.
Q. Based on your experience with Scopac's foresters and based on your knowledge of Scopac's inventory and systems, you thought that the inventory information you were provided was reliable?
A. It was the best I had available.
Q. And you had no concerns about the reliability of that information?
A. Like I said, it was the best I had -- the best I had available. I'm not saying there weren't

considerations there that might cause me some concern, but for appraisal purposes, I was willing to accept it.
Q. And you knew that Scopac foresters were providing you the best information they could, correct?
A. That was what I -- that was my understanding, yes.
Q. And you know them personally, correct?
A. Yes.
Q. And you trust them, correct?

115

A. Yes, I'd say so, the ones that I'm speaking of.
Q. And who are they?
A. Primarily Jim Adams and Sam Boyd.
Q. Now, when you take the timber inventory, you adjusted that or you broke it out by watershed, correct?
A. Well, that data was provided to me by Scopac foresters.
Q. In other words, on a watershed level?
A. That's correct.
Q. And you did not then try to break that down further into a polygon, on a polygon or stand level?
A. No.
Q. And can you just help me to make sure I got it straight as between watersheds versus polygons. How many watersheds are there on Scopac's property?
A. Well, we have what we call watershed assessment areas. We referred to them early as WAA's, and there are six of them.
Q. And within any one watershed, any one of those six, how many individual stands or polygons would there be? Potentially hundreds or even thousands?
A. As I understand it, just guessing, there's somewhere near 10,000 polygons throughout the property.
Q. Okay. Scattered across the six watersheds?
A. Well, yeah.

116

Q. Just making sure I understand. And your work was done at the watershed level, if you will, as opposed to the polygon level, correct?
A. I did -- I used the best data I had, and that's correct. I kept it -- I allocated the volumes that I received as carefully as I could in as many categories as I could.
Q. And so within each watershed, for example, you

break them out the best you could by species, age group, no cut, partial cut, no restrictions, correct?
A. Yeah. For instance, I allocated the volume -- the merchantable volumes that were in the plantation areas and the merchantable volume that was in the -- what we call young stands or tree merchantable timber.
Q. And beyond that sort of adjustment, though, you didn't refine it down to a stand level across the property, as you say, across those 10,000 stands?
A. No.
Q. How did you handle situations where, for example, you would have a stream buffer in a particular watershed if you weren't allowing for individual stands, how did you take that into account as you were doing your projections?
A. Like I said, I allocated that volume or accepted some of the allocations developed by Scopac

foresters as to volumes that are in these various categories. So I did the best I could to separate out the volumes that may not be harvestable in the near future.
Q. So if, for example, you were given a gross number for a watershed and you were told that 20 percent of that was partial cut, you would categorize for that watershed 20 percent of the inventory as partial cut?
A. Well, it was -- it was more fine than that as far as how much volume and how many acres. And I developed how much -- the timber by DBH class and size, diameter class size.
Q. And again, you did that -- and I appreciate that. And you did that on, again, kind of a watershed level. For example, if they told you watershed, this particular watershed has these particular age classes in it, this particular species mix, would you take an average for the watershed and then assign volume to those different categories?
A. No, I allocated them -- I allocated them unit by -- or restriction class by restriction class. And again, land type by land type.
Q. Based on overall -- based on the overall watershed volume and the information provided about the nature of that volume?

A. By WAA, if we can use that term, yes.
Q. If that's the one you're comfortable with, that's fine with me.
Now, the timber inventory data, I guess by definition includes -- only includes data from merchantable timber, correct?
A. Yes.
Q. And can you remind us what merchantable timber is?
A. Generally it would be a tree that's eight to ten inches in diameter and at least one log high.
Q. So merchantable, you can get a board out of it basically, right? I mean, that's the thought behind what's merchantable?
A. It's merchantable in the sense that you can sell it in the open market and there's a minimum size and generally that's standard within the industry.
Q. Now, Scopac's land has thousands of acres with premerchantable timber, correct?
A. I don't know how many acres. Those would be the acres that I assigned to the young stands.
Q. So anything that's premerchantable went into a young stand?
A. No.
Q. Now, what I'm talking about now is

premerchantable timber. Do you know how many acres of Scopac's property has pre -- is primarily premerchantable timber?
A. I'm saying areas that were classified as young stands are stands that are primarily made up of premerchantable timber. That doesn't mean there isn't some merchantable size trees out in those areas, but that's why they're assigned to that category, because they're classified as young stands.
Q. And over time, the premerchantable timber will reach a size where it joins the timber inventory as merchantable timber, correct?
A. Yes, over time, yes.
Q. Now, you use a ten-year projection period, correct?
A. Yes.
Q. And some of those trees will not reach merchantable size until some time after the tenth year, correct?

A. That's correct.
Q. So for those trees, you only include them as part of your reversion factor at the end of your tenth year, correct?
A. My -- they're included, the value of that material is included in that analysis.

Q. In the reversion?
A. In the reversion, yes.
Q. And you allow for that by assuming growth of those trees as a percentage of harvestable timber currently in the harvestable areas, correct?
A. I wasn't listening at the beginning.
Q. Sure. You factor them in by assuming growth as a percentage of harvestable timber currently in the harvestable areas, correct?
A. I developed my stabilized volume based on 100 percent of the growth in the partial cut areas and the no restriction areas. Now, keep in mind, I didn't harvest any of the timber in the first nine years that was assigned to the partial cut areas.
Q. That's right. You --
A. We rested those areas for the first nine years.
Q. So the partial cut areas, there's no activity in terms of harvesting until the tenth year in your projections, correct?
A. Yeah, it doesn't mean every acre of that parcel -- in the partial cut areas are going to be logged on the tenth year, but it just means --
Q. It just means --
A. The contribution of the growth in those areas is not accounted for in the analysis until that tenth year.

Q. And by your model, while it's not the case that everything will be cut in the tenth year, it is the case that nothing will be cut until the tenth year, correct?
A. That's -- that's correct.
Q. If we can look at table one of your report. And it's on page 14 of your report. And if we can pull that table out, please. Mr. Fleming, I believe you touched on this or similar information earlier today, but we talked earlier about watersheds, or WAA's as you would call them, and these are the WAA's on the property on the

left side. Do I have that right?
A. Yes.
Q. And across the top you have the different categories of trees and growth on the property. For example, timber, young stands, plantations, brush and hardwoods and non-productive, correct?
A. Correct.
Q. Now, under brush and hardwoods between the various acres there's about 5300 acres on the property, correct?
A. Yes.
Q. And we heard yesterday from Mr. Dean about how you can kill those trees with herbicide and then replant redwoods there to kind of retake some of this -- some of

this acreage. Do you recall that?
A. He mentioned some work they were doing on his forest.
Q. Well, you agree, though, don't you, that some of these acres, some of the 5300 acres can and should be replanted with conifer?
A. With conifers?
Q. Yes.
A. Yes, the acres that are assigned to that brush and hardwood category are acres that have the capacity to grow commercial forests in the future as opposed to the acres that I assign as non-productive, they would be areas that would not be -- it would not anticipate they would support stands of timber.
Q. I appreciate that. Thank you for explaining that. Now, you made no projections as to when those brush and hardwood acres might be converted or might come on-line as harvestable timber, correct?
A. Do I --
Q. You made no estimates or projections as to when that would occur?
A. No.
Q. You simply assumed that would be captured as part of your reversion rate?
A. I included some expenses that had to do with

reforestation of these areas in my costs on an annual basis.
Q. Okay. So on the cost side in terms of

converting those acres, you included the cost of clearing and replanting the 5300 acres; is that correct?

A. Well, a portion of them.

Q. And that was part of the expenses for the first ten years?

A. On an annual basis, it was an amount allocated for that forest improvement work.

Q. Now, in terms of the revenue side of that ledger, you didn't include any number anywhere in your equation for the value being added by the clearing of that land and the replanting of those trees, did you?

A. Well, I'm appraising the -- I'm forming an opinion regarding the market value of the entire property. And so it's all -- all kind of tied together. It's kind of like a matrix, you've got things going on in the costs, you've got things going on in the revenue and even though those trees are planted in the year one, for instance, they would contribute to the income in an indirect way because it's an ongoing process.

Q. Mr. Fleming, you did not make any specific adjustment to your reversion factor to take those acres into account regarding future production, did you?

A. My reversion factor?

Q. Yes, the factor that you intend to use in part to capture or define the value after year ten when these trees would be coming on-line? Did you adjust the reversion factor at all to take into account these trees coming on-line?

A. There are a lot of considerations in my estimate of the reversion factor.

Q. But this wasn't one of them, was it?

A. I don't think it's a large one, but I certainly realize that I'm doing some reforestation work on an annual basis.

Q. Do you recall in your deposition where I asked you can you identify the amount of adjustment made to the residual cap rate as a result of the replanting or as a consequence of the replanting of these 5316 acres, and you responded no?

A. That's true.

Q. I thought we were close to agreeing. I just thought I would define the issue. Now, you applied a 3.75 percent growth rate for young growth redwoods; is that correct?

A. Yes.
Q. It was an easy one?
A. Well, I have another three something, so I have to --

Q. And for old growth trees, you assign a growth rate of zero, correct?
A. Yes, for appraisal purposes.
Q. They do grow some, just not at 3.75 percent?
A. They grow but they also die, so there's sort of a net difference and it generally isn't very much.
Q. Now, I know you discussed your ten-year projection period. I just want to make sure I understand where we are on that. You considered five years to be too short a period; is that correct?
A. Yes.
Q. And you think by the time you get to year 15 there's too much uncertainty for you to go out that far?
A. Generally.
Q. Now, are you aware that other timber appraisers use 50-year projection periods?
A. Apparently.
Q. Did you know that before this case?
A. Yes.
Q. And are you aware, and in fact, you saw that Mendocino Redwood, which as we heard is somebody who is actually in the business and therefore, someone we should listen to very carefully, they use a 50-year projection period, right?

A. Well, they -- I don't recall what projection period they use.
Q. Fair enough. Fair enough. And are you aware that other timber investors deposed in this case have testified that they actually use 60-year projection periods?
A. No.
Q. Now, you talked also a little bit about harvest levels. And you've testified that you chose 80 million board feet for the first ten years because you believe that's a good estimate of what can actually be cut, correct?
A. No, I think it was 81 something.
Q. Thank you.

A. And it was based on my analysis available.
Q. And your analysis is that that's an amount -- a good estimate of what can actually be cut on the property annually for the next ten years?
A. It seems reasonable.
Q. And as an appraiser, you want to determine the potential production of the property, correct?
A. Yes.
Q. And therefore, you used the actual productivity of the property to assess its true value as an appraiser?
A. Overall, yes.

Q. And if a purchaser elects to harvest less than what the property can produce, that's the purchaser's choice, correct?
A. Yeah, they don't have to harvest anything if they don't want to.
Q. But that doesn't change the underlying value that's reflected in the appraisal, does it?
A. No.
Q. Now, in your appraisal you don't add anything for gravel extraction, correct? There's no value assigned to that?
A. I don't add any specific value in considering my analysis.
Q. And you don't add any specific value for cell towers either?
A. No.
Q. Or any other non-timber related activities?
A. Not specifically, no.
Q. Now, since 2002, the annual average price increases for redwood range from 7.7 percent to 10.8 percent, correct?
A. Say it again.
Q. Since 2002, the annual average price increases for redwood have ranged from 7.7 percent to 10.8 percent?
A. Should I know that?

Q. Well, it's in your report, so if you want to look at page 47 of your report. And specifically, about eight lines down, it says "the five-year averages range between 7.7 percent and 10.8 percent." Does that refresh your recollection?
A. I'm looking at table 16 on the previous page.

We're talking about redwood?
Q. Yes, sir.
A. What were the numbers?
Q. Well, I'm reading your report on page 47 where you say "the five-year averages range between 7.7 percent and 10.8 percent."
A. That's correct.
Q. Okay. For purposes of your report, you assume a 3.5 percent annual growth rate for redwood pricing, correct?
A. Yes.
Q. And then you assume for your analysis a 2.75 percent inflation rate?
A. Yes.
Q. So the real rate, I guess, as it's being called up here today, would be about .75 percent per year?
A. Yes, in this case.
Q. And you used SBE pricing in reaching that result, that conclusion?

A. We're talking about now the --
Q. The -- your selection of the 3.5 percent annual growth rate in pricing.
A. It's based on my analysis, which is primarily data regarding a trend indicated by SBE data.
Q. Did you use the Pacific Rim Wood Market data?
A. No.
Q. Why not?
A. I don't think it's reliable for appraisal in this redwood country.
Q. Why not?
A. I'm not really aware of some of the detail that's in there. The only copy I've seen shows one number for redwood. I'm assuming it's young growth redwood but I don't know that. I don't know how it's collected. And I don't know enough details.
Q. And then in terms of pricing trends, you focused on the last ten years to evaluate what pricing potential will be during your ten-year projection period, correct?
A. I focused on the ten-year data because that's similar to my ten-year projection period.
Q. So there's a symmetry for you there. You go back ten years because you're going out ten years?
A. Well, I think I would want to use data within

that range, but I don't know that I'd want to go back too far.

Q. Further than ten?

A. Well, ten to 15. I indicate 15 here, but I'm focused on the ten year.

Q. Now, in terms of Douglas Fir pricing, you used current Doug Fir prices as your starting point, or current as of the date of your appraisal, correct?

A. Yes, based on data that I collected locally.

Q. Yeah. And in your report, you draw distinctions between merchantable timber and logable timber. You've got those terms in mind, don't you?

A. Yes.

Q. Can you tell us what logable timber is.

A. Okay. Well, merchantable timber is the total.

Q. I'm sorry.

A. Is the total volume. So now we're allocating basically what would be considered merchantable -- or I'm sorry, logable. And that's part of the analysis that I received -- part of the data I received from the Scopac foresters when we allocated volume by restriction class and harvest class. So timber that was assigned to the -- to the no-cut areas for whatever reason, would be placed in the -- essentially be considered not logable during my projection period.

Q. So logable is a tree that you can actually cut, true? That's one of the factors?

A. Well, it's -- again, it's a little more complicated. It may be a tree you can cut, but you may not want to do it economically.

Q. That was actually my next question. Pricing is a factor in the logability of a particular tree, correct?

A. At any one point in time.

Q. And how do economics enter into a logability of a tree or a stand?

A. Well, clearly if the value delivered at a local sawmill is less than the cost to get it there, then you would be -- you would probably not be too interested in harvesting it.

Q. So if you can't make money on it, it's not logable as a practical matter?

A. Well, I think if you had -- if you had some of

the species that were not logable in that economic sense, you may -- you may just not harvest any timber until they were all -- all the volume was economically harvestable.
Q. Leave them in the woods and let them grow?
A. Probably.
Q. Now, in terms of your harvest projections, though, you use a static, if you will, species mix throughout that period, correct?

A. That's correct. On average.
Q. Okay. So on average you're cutting the same amount of Douglas Fir five years from now as you are today?
A. That's what I assume in my analysis, yes.
Q. Now, Doug Fir pricing is at a 20-year low, correct?
A. I'm not sure if it's a 20-year low.
Q. You know it's very low, though, right?
A. It's abnormally low.
Q. Relative to recent years?
A. Yes.
Q. And what annual rate of price increase do you use for Douglas Fir for your assumptions?
A. I was using on a nominal basis 2 percent.
Q. 2 percent. And then again, if we were to subtract out your inflation rate, we would come to, I guess, a negative .75 percent in terms of price movement each year, correct?
A. That's the way the data worked out.
Q. So the way the data worked out was the real, if you will, price of Doug Fir goes down by three-quarters of one percent each year off into the future, correct?
A. Based on my analysis, and I'm hopeful that it will turn around soon.

Q. Now, you also made some assumptions about the price of harvesting Doug Fir in your model, correct?
A. Not specifically.
Q. Okay. Harvest costs generally?
A. Yes.
Q. And that is that it will track inflation?
A. In this case, I used my best data available to adjust those expenses, yes.
Q. And that's 2.75 percent annually, correct?

A. That's a number I selected for this appraisal based on the ten-year projection periods.
Q. Understood. And so the real increase, if you will, in -- so you have -- in harvest costs would be at about zero, correct? In other words, it tracks inflation, increases 2.75 percent every year. While the Doug Fir price is actually, in real terms, decreasing by three-quarters of a percent, correct?
A. At the current time. Or during the projection period, that's what it seemed to be.
Q. So based on your projection period, the cost -- the delta, if you will, between the cost of harvesting Doug Fir and what you can recover from Doug Fir is increasing each year with the profit margin either shrinking or the loss getting bigger each year, correct?
A. That's correct over my projection period, but

134

when I stabilize my harvest into the future, I pretty much -- that difference is built into the model, you might say, and becomes -- it doesn't continue on forever.
Q. When does it end?
A. Hopefully it will end next year.
Q. So your thinking is that in the real world, hopefully the Doug Fir market will rebound next year?
A. I consider in my -- I mean, all I'm using is the data that I have.
Q. I understand.
A. And then when I get to the final reconciliation of value, I think in my report I indicate -- you can tell I'm a little concerned about the fact that the Douglas Fir is down, abnormally low I think is the concern that I -- or that's how I describe it. So when I get into that reconciliation of value, I come back to some of these factors that are concerning me, and there's others, in order to come to my final opinion of value.
Q. And so in your 35 years of experience, you expect Doug Fir pricing to bounce from where it is?
A. Yes. And I think I indicated earlier that prices for most species will die, if you want to use that word, or drop. I shouldn't use the word die. Drop some way and fall in wintertime, particularly in Humboldt County where the sawmills have pretty large log decks,

135

weather conditions, there's not much activity anyway and

so values tend to drop as a rule, regardless of the economic conditions of the country.
Q. Okay. Well now you're drawing an interesting distinction because in the first instance you're talking about broad economic trends like the impact of the housing market on Doug Fir generally, correct?
A. Yes.
Q. And that, you expect to improve next year. That's your estimate as an expert?
A. I'm not an expert on that.
Q. Okay. But it's your hope as someone who's been in the business 35 years and has watched this occur that things will again bounce within the next year or two?
A. Well, I think that most people anticipate that at least the Douglas Fir market will go up. I think Mr. Dean referred to that, if I can use his comment.
Q. Sure. And then the other element you're talking about is kind of seasonal shifts in pricing. And you said that prices often go down in the winter on almost an annual basis. Do I have that right?
A. I don't know that prices actually go down. The activity slows significantly. The sawmills don't need timber as much as they might in the spring. So as a rule, most sellers decide not to sell timber in that

period of time. And the timber that does sell may or may not reflect some special needs.
Q. And in terms of the way it works in the real world, and you can tell me if I get this wrong, is that because in the fall companies have been out in the woods cutting in the good weather, their log decks are full and then over the course of the winter they cut those logs and then in the spring the mills are hungry again?
A. That's one way to characterize one of the factors, yes.
Q. Have you ever done an analysis if your Doug Fir projections were to continue out and Doug Fir pricing was to drop in real terms by .75 percent a year while harvest costs tracked inflation, at what point Doug Fir would become unlogable economically?
A. No.
Q. Now, in your report, what assumption do you make -- let me back up. There are various means of harvesting timber, correct? It's not a trick question. There's cable, there's tractor, there's helicopter,

correct?
A. If that's what you call means, yes.
Q. Methods, ways?
A. All right.
Q. And the most expensive of those is helicopter

logging?
A. Relative to the other two that you mentioned?
Q. Yes.
A. Yes, normally.
Q. As opposed to trying to think of the most expensive way you could possibly get a log out of the forest?
A. You can have some pretty expensive cable logging.
Q. What percentage of logging do you assume Scopac will do by helicopter each year over your projection period?
A. I believe I used 7 and a half percent annually.
Q. And have you ever compared that number with company estimates?
A. No.
Q. Have you ever considered a number below five percent for helicopter logging?
A. Not for this property, no.
Q. There was a fair amount of discussion about your discount rate, and I won't take you back through that in any great length. One of the -- we've talked before when we were in your deposition about your reference to what you called a safe rate as part of your valuation of what a discount rate should be. Do you

recall that discussion generally?
A. Generally.
Q. What is a safe rate?
A. Safe rate, as I recall, is -- would be the T-bill less inflation. And it's kind of something I calculate, I think, as a general rule. It doesn't work in my analysis per se.
Q. And do you use, again, for that reference point, that data point, since you use a ten-year projection period, do you tend to use a ten-year T-bill?
A. I would in that case, yes.
Q. And do you know what the rate -- the rate of

return on a ten-year T-bill has done since your valuation date of October 1, 2007?
A. I don't, but I really don't use the ten-year T-bill. As I indicated earlier, that's just -- it is something I might calculate as far as the differences between safe rate, the T-bill rate, and in this case, a VAA bond rate, which is really my starting point.
Q. So if the rate of return on a ten-year treasury had dropped by 100 basis points since October 1, 2007, that wouldn't change the discount rate you apply?
A. For what date of value?
Q. October 1, 2007.
A. My analysis wouldn't really be tied to the

T-rate, T-bill security at that point.
Q. If you were doing that valuation today, would it?
A. I don't usually use T-bills. I mean, I look at them, but in essence, that's not my focus.
Q. You also assign a cap rate for your reversion period, correct?
A. Yes.
Q. And what cap rate do you assume?
A. For my appraisal in this case was 8.5 percent.
Q. And that was a nominal cap rate?
A. That's on a nominal basis, yes.
Q. So again, if we were to adjust that for your 2.75 percent inflation, your cap rate was 5.75 percent?
A. No. That rate would not be any different whether you're using an analysis on a nominal basis or a real basis.
Q. Okay. So you would -- you would not make an adjustment for inflation on the 8.5 percent?
A. No, I would not.
MR. DOREN: All right. Just one more topic area, Your Honor.
THE COURT: All right.
Q. (By Mr. Doren) Now, in your opinion, a highest and best use must be an economic use, correct?

A. Yes.
Q. And in your opinion, an economic use is one that produces income, correct?
A. Generally, yes.

Q. And in your report, you stated that "in addition, a highest and best use must be an economic use. A non-economic use such as conservation, natural lands, preservation or any use that requires the property to be withheld from economic production is not a valid basis upon which to estimate market value." Is that -- that's an accurate statement of your opinion, correct?
A. Yes.
Q. As a result of that opinion, when you went to value the lands of the MMCAs, you looked at them in income producing ways, correct?
A. Yes, because at that time the HCP would have terminated.
Q. Well, understood. Understood. And that's our next step. And so the way you value the MMCAs was, first of all, you assume it had to be for an income producing purpose, correct?
A. Yes.
Q. And the income producing purpose that you saw was cutting old growth trees off that property 42 years out?

A. Based on its highest and best use.
Q. And through that analysis, that's how you got to a $16 million value, correct?
A. That was a lot more going on in my analysis.
Q. Moving parts on --
A. Yeah, a lot of moving parts there.
Q. Moving parts on when you harvest the trees in the MMCAs, right?
A. Yes.
MR. DOREN: I pass the witness, Your Honor.
THE COURT: All right. Does the other debtor have any questions?
MR. LAMB: No, Your Honor.
THE COURT: Okay.
MR. FIERO: The Committee has questions, Your Honor.
THE COURT: Okay.
MR. FIERO: I think the witness has been very forthcoming so this should take 20 minutes or less. Also, I would like the Court to take judicial notice on Yahoo weather that it is not always sunny in Scotia. Every picture that we have seen has the beautiful rays of

sunshine coming through and the truth is it's quite foggy.

CROSS-EXAMINATION

BY MR. FIERO:

Q. Hi, Mr. Fleming. I just want to revisit some topics that have been visited before and then maybe I'll ask some new questions just to kind of clear things up.

Let's start with a question that Mr. Schwartz asked you about a forest that is 70 percent redwood on average. Let's just take a stand and say that it's 70 percent redwood on average. And let's say that you cut a stand within that forest that's 90 percent redwood. Haven't you just increased -- or haven't you just decreased the amount of redwood in that forest relative to other species?

A. That's a big property and it has 4 billion board feet in it. I guess, yeah, technically it might have shifted the species mix slightly.

Q. Okay. And if you're cutting 100 million board feet a year, might that also -- if you had similar percentages applied, wouldn't that affect the species mix of the forest?

A. In my analysis, I'm going to use an average. I sort of indicate an average. It will change from year to year probably to some extent.

Q. Okay. So the species mix of the merchantable volume would change year to year as cuts are made?

A. Yes.

Q. And but your model doesn't allow for that in any particular way?

A. Well, it doesn't -- it doesn't allow for the small fluctuations that might occur over the ten-year projection period. But generally, I pretty much end up with the same mix that I start with in my analysis.

Q. Okay. So you assume that it stays static, even though you agree that it does change?

A. Well, it changes, but it's a pretty narrow range in my analysis.

Q. But in answering my question, you agree that it changes?

A. Slightly.

Q. Now, when you were talking to Mr. Schwartz, you indicated that you didn't have data from January to March 2008. Why not?

A. What kind of data?

Q. Data about log prices.

A. I've been busy on this project, I haven't really had a chance to collect information.

Q. What about cutting data from the company?

A. I don't believe I have any, but as I say, I've been focused on what I'm doing and I haven't really -- I haven't really referred back to some of the new data that

I might have received, particularly with regard to what might have been cut this year.

Q. Okay. So is it possible that the company actually gave you updates about its cutting activities but you chose not to include them in your report?

A. I have been working on my analysis for quite some time. And it's an ongoing process. And I -- items such as the harvest levels and those kinds of parameters were probably initially done back in September or so. I don't know the exact dates. So -- and I was working on -- even though I adjusted those slightly for the harvesting between January and the end of September, eventually a lot of the decisions were made way back in that analysis.

Q. Is it your testimony that you didn't know in the first three months of 2008 that log prices were dropping?

A. When?

Q. The first three months of 2008.

A. At the beginning?

Q. Yes. January, February and March, did you have any idea that log prices were dropping?

A. I didn't know in January 1 what would happen to prices the rest of the quarter, no.

Q. What about on March 30?

A. Well, March 30 I could have -- well, I don't know. I haven't done the analysis. I might have gotten some detail about a sale or two during that period, but I don't remember getting anything from the -- in the sales data from the company.

Q. What about on March 9, the day before you issued your report?

A. What about it?
Q. Did you on that day have any indication that log prices were dropping?
A. I don't remember what day that is, but no, not necessarily.
Q. When was the first time you told the indentured trustee that your value date for appraisal purposes would be October 1st, 2007?
A. Probably on March 10th of 2008 when I gave them the report.
Q. Okay. So it's your belief that before that moment, they did not know what effective date you would be using in your appraisal?
A. I may have discussed it. I may have told somebody. It wasn't a secret. But I don't know that it was any -- I don't recall.
Q. So is your answer I don't recall?
A. Well, what was the question again?

Q. The question is: When did you first tell the indentured trustee that your effective date of value would be October 1st, 2007?
A. I would have to -- the first day that I would know about would be March 10th, 2008.
Q. Okay.
A. Actually, well, that's when -- it would be that week. That's the effective date of my appraisal.
Q. So your answer is that the first time you made the indentured trustee aware that the effective date of value for your appraisal would be October 1st, 2007 was some time during the week prior to March 10th?
A. I don't know when they got my report.
Q. Now, you -- when you were asked about log prices and them going down recently, you said that prices dropped by a season and then they come back as the spring wears on. Do you remember that testimony?
A. I'm speaking generally, yes.
Q. Is that what you expect to have happen this year in the midst of the housing crisis?
A. I think it's certainly possible.
Q. But if a client were to call you or an investor were to call you and ask you for your opinion of what was likely to happen, what would you advise them?
A. I would have to research it.

Q. So your answer is you don't know?

A. That's correct.

Q. Now, you explained to us that you took the data that the company gave you, you broke it down by WAA, you broke it down by tree size and then you broke it down again by whether or not it could be cut or partially cut or not cut at all; is that right?

A. No. Scopac foresters provided volumes as of 1/1/07 allocated by various restriction classes and harvest classes by WAA.

Q. Okay. And did you do anything to check that data?

A. No, other than what I testified to earlier.

Q. Okay. And what was that? I'm sorry. I don't remember. What checking did you do?

A. It was my understanding that that was the best available data being provided to me by Scopac foresters who I know and have known for many years. And I felt comfortable with that information.

Q. Okay. So your checking consisted of assuming that they were correct?

A. Yes.

Q. Now, in your projection, you have assumed that the cut on a going forward basis could be approximately 81 million board feet per year, am I right?

A. For the first nine years, yes.

Q. Okay. But that's really -- that's a plug number, right? It doesn't bear any relationship to any particular stand of trees, to any particular location on a map that we could point to such that we could understand what would be cut in year one of your projection, year two, year three, year four?

A. I don't know what a plug number is, but I kind of agree with the second half of your question.

Q. Okay. So the 81 million board feet are, theoretically 81 million board feet, it's not verified by any foresters having gone and walked in the forest and demarcated an area and said this is where we'll do a THP?

A. It's based on a very careful analysis of allocating the volumes and doing what I would do in estimating what that harvestability would be by WAA.

Q. But it is an estimation, right? You didn't walk through the forest and select the areas to be cut?

A. No, I did not.
Q. And no one else did it for you?
A. No.
Q. Okay. And the reason that you didn't do that is you don't really know what is exactly in any particular area of the forest, do you?
A. No, but I made an attempt to make sure that I

allocated volume that is not likely to be harvested, at least as far as quantity is concerned, into the various restriction classes and land type classes. For instance, the volume that's in the plantation areas, I allocate and set aside, at least for the first nine years, and select in this scenario, if you will, that that would not be -- that area would not be entered and that that timber is not likely to be harvested over the projection period.
Q. And you did that so that you would have a fudge factor, right, a safety valve in case something else in your projection was wrong?
A. No. I just think this would be -- this is a reasonable decision and that no timber would be harvested in what those areas as well as the timber that is assigned to the partial cut areas, at least for the nine years, the first nine years in my projection period.
Q. Did you check with any of Scopac's foresters to see whether or not those assumptions were valid?
A. No. Our -- our opportunities to talk to Scopac foresters are definitely limited in this circumstance.
Q. Okay. Now, if you had used the GIS database, you might have been able to figure some of this stuff out on a per stand or a per polygon basis, am I right?
A. Well, I used the -- I used the GIS data in an indirect way because it's relied on by Scopac foresters

to give -- to allocate the volumes as I indicated earlier.
Q. Did you personally ever sit at a computer and manipulate one bite of GIS data?
A. As I understand it, I was -- the first day that I could have done that was on March 11th in San Francisco when we actually had a computer up and running. And this was one day after I had finished my appraisal report.
Q. And that's data that you wanted, right?
A. Well, I'm an appraiser, I never turn down any

information. But I feel very happy with what I have done in my analysis and I think I had adequate data to form an opinion with regard to market value.
Q. And that's true even though you didn't know anything about the strata of the forest as explained by the GIS database?
A. I had some -- I had copies of printouts of volumes by -- by what we call polygon of the stands that was available for review.
Q. Do you have a copy of your deposition in front of you?
A. Yes.
Q. Would you mind turning your attention to page 225.
A. Yes.

Q. Okay. And do you see where on line 21 I asked the question: "Okay. So did you ask for it?" Your answer was: "Originally. Originally it was on our request for information." And my next question was: "Okay. Am I remembering correctly, that you didn't get it until some time after mid January of this year?" Answer: "I'm not sure when we received something. I don't know what. I'm not even sure what we received." My next question: "Okay. Now, why aren't you sure? Is it because you found it difficult to manipulate it?" Answer: "I have not seen it. I don't have that data." The last question: "Okay. So if I were to ask you to show me in your report where you took information from the GIS database and included it in your report, that's not something you could do, right?" Answer: "It's not included in my report."
A. Can I respond? Is that a question?
MR. SHIELDS: Your Honor, he's read this into the record. I think the witness has the right to comment. He didn't put it in the form of a question, he simply read it.
Q. (By Mr. Fiero) Were those my questions and were those your answers when we sat for your deposition on March 28th, 2008?
A. I'm not questioning the record.

Q. Okay. Now, you were asked about adjacency and you said "I considered the adjacency restrictions in my

analysis." How can we see that in your report?
A. I'm aware of the requirement, and again, that's why I allocated the volumes the way I did with regard to plantations, other areas. But I did not do a stand-by-stand analysis, no.
Q. All right. And you don't even know what adjacency restrictions the property had on it on the day your projection begins, right, this year? So you don't know what areas aren't available for cutting because of existing adjacency problems, much less the problems which would be created by the 81 million board feet that you project cutting over the next nine years?
A. I know what the rules are and I also know that these areas that are assigned to the so-called adjacency areas are temporary, that after five years, they're no longer going to be considered adjacency areas. So things change as the dynamic forest. And that's why I have to kind of stand back sometimes when I'm estimating my harvestable volume. It doesn't seem to make any -- it doesn't seem to make sense for me to kind of try to bury the species mix as we go through the projection period, for instance, when in fact, it may change a little. It's the same thing with adjacency. It's a temporary

condition.
Q. It's a little bit like putting together a puzzle, right? You can't go into -- next to an area where you've just been, am I right?
A. For a certain period of time.
Q. But you didn't undertake to figure out whether your projected cutting would satisfy those adjacency requirements by actually trying to put the puzzle together?
A. No, but I'm well aware of the fact that possibly in four years if the trees are growing fast enough, if they grow five feet tall and over three years, that that area would no longer be considered an adjacency area under your scenario.
Q. Okay. So your answer is no but it's possible that if the trees grew five feet, that that might be change?
A. Well, it will change. Or if you wait five years and the area is adequately stocked, then it will no longer be considered in the adjacency issue because it's already stocked or you've waited long enough.

Q. I think you said in discussing the comparable sales approach that you thought about comparable sales but decided that the unique characteristics of the property made it difficult and you decided to not use

that approach, am I right?
A. No.
Q. Okay. Shall we go through the five factors that you listed when you said you decided the comparable sales approach wouldn't work?
A. You used the word difficult. I said that it would not -- it would not produce a meaningful indicator of value.
Q. Okay. Can you tell me what deals you did consider before you decided that it wouldn't produce a meaningful indicator of value?
A. Excuse me?
Q. Which sales did you think about and throw out in deciding that the comparable sales approach wouldn't work?
A. I don't think I would know that. I had a lot of sales initially and I boiled them down to a smaller list of sales, but I never really came to a conclusion of which ones I might have used in the analysis.
Q. Okay. Can you name the major timberland deals consummated in the last couple of years in the Pacific Northwest?
A. Pacific Northwest?
Q. Yes.
A. I was focusing on ones that were more local.

Q. Okay. But you can't identify any one of the local sales that you had in mind that you decided weren't sufficiently comparable?
A. Well, I basically rejected them all.
Q. Isn't it true that there were several timberland investments over 100,000 acres in the last several years in Oregon and Washington?
A. I'm aware of some sales in Oregon and Washington, but I'm not sure that I would use those to appraise this particular property in Humboldt County, given the conditions that apply to them.
Q. And that would include the Manacio seal for Longview -- the Manacio deal, the Longview fiber sale and

the Hamilton Tree Farm deal?
A. Yes.
Q. And did you work for the buyer or the seller in any of those deals?
A. No. Well, I should say one of the -- I worked for one of them. I mean --
Q. On the transaction, sir?
A. Not on the transaction, no.
Q. Okay. Now, how would the federal government view an appraisal that doesn't use the sales comparison approach?
A. I don't work for the government.

Q. Isn't it true that the uniform appraisal standards for federal land requisitions require the use of the sales comparison approach?
A. I'm certainly sure that they encourage it but I don't know that it's actually a requirement.
Q. Do you know whether or not USPAP discourages -- I'm sorry, another question.
Well, just going back to the sales comparison approach for a minute. You mentioned the existence of the redwoods, you mentioned the size of the property, you mentioned the HCP. Are there ever really two sales which are exactly alike?
A. No.
Q. And isn't it true that appraisers and investors regularly look to other sales to help determine value?
A. Yeah. Years ago I used to use the comparison -- the sales comparison approach a lot. And I was -- this is sort of before the discounted cash flow analysis came into play so we did use the sales comparison approach. But in more recent times, I think the discounted cash flow analysis has certainly become superior, better software and even though they may look at some comparables that they might know about, I think they mostly depend on the discounted cash flow analysis.
Q. So are you saying that you regularly ignore the

analysis of actual market transactions in your appraisal work?
A. No, not at all.
Q. But you chose to here?
A. As I indicated earlier in my report and I think

to Mr. Schwartz that I would prefer to have two approaches to value. The cost approach normally doesn't apply but if I use both approaches, that would be great.

Q. Are you aware of the discounts raised -- I'm sorry, the discount rates used in other recent large timberland investments in the Northwest?

A. I'm not familiar with any of those sales in that regard.

Q. Do you think that investors in, say, Oregon and Washington would want to increase their discount rate if they were to purchase in California on account of the regulatory risk?

A. I have no idea.

Q. Do you believe generally that where more risk is perceived, an increase in the discount rate is appropriate?

A. I think generally California is considered a little more regulatory minded than both Oregon and Washington. But there may be some other benefits that would offset that negative, if you will.

Q. Is there benefit still logging in California that aren't present in Oregon and Washington?

A. There's redwood.

Q. Now, in your valuation, you've projected essentially an infinite increase in redwood prices beyond year ten, am I right? It always goes up?

A. My projection period is ten years, and I'm appraising that property based on the assumptions I used in my analysis. So I pretty much go out ten years and that's all I'm projecting.

Q. And your valuation of the reversion doesn't incorporate what amounts to a perpetual increase in both growth and price?

A. In the way that the reversion value is calculated, based on the net revenue in that tenth year, it basically stops or stabilizes all those changes into the future.

Q. So you're saying that it doesn't result in an assumption that prices will always grow, at least a little bit, on a real basis and that growth will continue to grow at its -- at a tenth year rate?

A. In this analysis, it basically freezes the changes, if you will, with regard to both revenue and cost.

Q. So you think it's frozen, you don't think that

it's actually a snapshot of a continually increasing line?

A. What I'm estimating in the process of calculating the reversion value, it's essentially estimating what I feel the resale price in that property will be at the end of ten years. And that's what I -- and after I take off some sale costs and I discount that back to the present, that's the contributory value of the reversion defined as the net benefits at the end of that projection period.

Q. Now, in this case, you've got more of the value in the reversion than you do in the nine years, am I right?

A. I don't know.

Q. Okay. I think we can look at it together on page 57 of your appraisal. If you go down to the bottom, the lower left-hand corner.

A. What was the question?

Q. The question is: Have you attributed more of the value to the reversion than to the income stream of the nine years.

A. Well, the present value of the income stream is less than the present value of the reversion, yes.

Q. So because the reversion is essentially the value of the property into the future forever, isn't that

the more risky part of the analysis?

A. Well, the -- my estimate of the resale of property of the value is based my residual cap rate as one factor. So I have adjusted -- I've adjusted my reversion -- residual cap rate to reflect the risk involved in this analysis.

Q. Okay. And that rate was -- is 8.5 percent, am I right?

A. Yes.

Q. Okay. And you don't believe, sir, that any deduction should be made for that to reflect inflation?

A. I'm sorry, I don't understand.

Q. Well, you otherwise --

A. I used the nominal basis, if that's what you're speaking about.

Q. Right. So the real rate would be more like

5.75?

A. No. The residual cap rate does not change whether you -- whether -- it stays the same whether you use an analysis based on real basis or a nominal basis.

Q. The number doesn't change, that's your testimony?

A. Yes. That's different than the discount -- the discount rate.

Q. Now, I think you've noticed that both Scopac

and Marathon have relied on GIS data in coming up with their view of the forest and its value, do you recall that?

A. Generally.

Q. Okay. Is it your impression that investors regularly rely on GIS data when they're trying to figure out what they want to pay for a property?

A. I think everybody wants to know what the volumes are and how much data they can accumulate with regard to property they're interested in.

Q. Which GIS database systems are you capable of operating?

A. I don't -- I don't have a GIS system.

Q. Okay. So you're not familiar with the mechanics of the debtor's GIS database or any others, am I right?

A. As far as I understand, it's a very complicated and expensive system.

Q. But your understanding is secondhand, sir?

A. Excuse me?

Q. Your understanding is secondhand?

A. Understanding of what?

Q. Your understanding of whether or not their system is complicated, it's a secondhand understanding? You don't have any personal experience with their GIS

database?

A. No.

Q. Now, isn't it true that USPAP suggests that appraisers collect data on past operations from the owner in order to build their view of the valuable property?

A. I'm sorry?

Q. Isn't it true that USPAP suggests that appraisers go to the subject property and ask the owner for their historical data as one piece of the information they use to build their appraisal?

A. I don't think that's in USPAP, but I think that an appraiser would get as much information as they can accumulate in their process, yes.

Q. Now, did you hear Mr. Dean testify yesterday?

A. Yes, I did.

Q. Okay. So you're aware that he testified that in 2004 the company expected to harvest 160 million board feet for many years into the future, do you recall that?

A. Scopac?

Q. Scopac, yes.

A. I don't really recall that, but I'll accept that.

Q. Okay. Did you also hear him testify then in 2005 the company reduced their harvest rate for the next ten years to 100 million board feet per year?

A. I think I remember that.

Q. Okay. And do you personally know that the company only harvested 99 million board feet in 2006?

A. I don't remember what their number was.

Q. Okay. Did you hear Mr. Dean testify to it?

A. I might have.

Q. And what about in 2007 when the company only harvested 74 million board feet, was that something you were aware of?

A. I don't know that I was aware of it, but I know that they had cut 63 million through September so that seemed maybe reasonable.

Q. Did the company's inability to meet its own harvest projections influence your view of the harvest in any way?

A. No.

Q. Okay. So you elected to ignore the company's prior history when you took their data and created a model which proposed cutting 81 million board feet per year more or less?

A. Like I said, as I indicated earlier, I've been working on my analysis, and quite frankly, I was pretty much, even though I continued to tinker with it and change things over the -- over the course, the entire course of the project, I really didn't come to a final

conclusion until probably March 9th.
Q. Okay. But you've been working on this since 2005, am I right? Isn't that what we learned from the Houlihan Lokey report?
A. No.
Q. Is it your testimony that you didn't assist Houlihan Lokey on the preparation?
A. Well, I had been working on it but not specifically on this appraisal since 2005.
Q. But my point is, sir, that in assessing the performance of the company at least since 2005, you've been watching what it's been doing, how much it's been projecting and how much it's been cutting, am I right?
A. I had data in 2005 that was mostly 2004 information, and when I came to this aspect of the -- if you want to call it the total project, the 2007 work, I did focus primarily on 2006 information because it was the last full year that I had available to me.
Q. Okay. So in 2006, the company had already come down from its 2004 projection of 160 million board feet to 100 million board feet. How did you look at that change in the company's view of its own forest and apply it to your appraisal, if at all?
A. I didn't at all.
Q. Okay. Now, I think there was a question asked

earlier of you about how Marathon prepared its growth projections. Are you aware of the fact that they did in fact use a polygon by polygon analysis, unlike your own work?
A. I believe that's true. At least I believe that's what Mr. LaMont said.
Q. And if it's done that way, it can't necessarily can't be done on an Excel spreadsheet, can it?
A. No, and it's not necessarily better.
Q. And why do you believe that?
A. Because I think my method is very reliable and I have used it for many years, and a lot of time I have to admit when you do an appraisal, you don't have a lot of data that might be needed in a computer model.
Q. And what data were you lacking between the beginning of January when you were asked to prepare this appraisal and March 10th when you issued your opinion that you would have liked to have had?
A. We didn't get the GIS data until, as I

understand it, March 11th, which was after the date of my report.
Q. Now, you said "as I understand it." What's the basis for your understanding, sir?
A. Because I was in San Francisco on March 11th and 12th, as I've indicated before, and apparently that

was the day that they actually got hooked up.
Q. Who is "they"?
A. Well, Bill Kleiner was there. It is a terminal that had been agreed to by the parties that would be put in Houlihan Lokey's office in San Francisco.
Q. All right. And prior to that date, you had no access to any GIS database information?
A. I don't believe so. Now, I may be wrong. That wasn't really an area that I was concerned about in the sense of I was the contact man.
Q. Now, in your critique of the other appraisals you mentioned that Mr. Yerges and Mr. Mundy were not licensed foresters or appraisers in the State of California. Do you recall that criticism?
A. Mr. Yerges and Dr. Mundy?
Q. Yes.
A. I don't know whether Dr. Mundy is licensed in California. It seems like he hesitated someplace along the line. I'm not sure.
Q. Do you know whether --
A. I don't know the details.
Q. Do you know whether Drs. Iles or Reimer are licensed as foresters in California?
A. I don't believe they are, but I don't know.
Q. If they're not, does that mean to you that

they're practicing illegally by doing forestry consulting for Scopac?
A. I'm not -- I'm not sure on the process.
Q. Is that something that you as a California registered professional forester would look a scant at?
A. I'm an appraiser. I am a licensed forester. I don't really look at the rules so much because I'm already licensed. But I don't believe that they are licensed foresters in California.
Q. I'd like to revisit this question of your contact with Mr. Daniel because I want to make sure that

I understand it and that the Court understands it.
Prior to March 11th, had you ever met Mr. Daniel in person or on the telephone?
A. I had not met Mr. Daniel before March 11th. I had not talked to him on a one-to-one telephone call, but I may have -- he may have been involved in a conference call prior to March 11th.
Q. So let's go over your deposition testimony because I want to make sure that we all understand, and if there's something that needs to be corrected, it can be corrected. Take a look at page 37 of your deposition.
A. 137?
Q. 37, up front. Okay. So you see at line 14 it says, Question: So the first news that Houlihan Lokey

would have had of your opinions on the valuation of the combined timberlands would have been after your completion of this report on March 10th, 2008?" Answer: "Yes." Question: "Do you know Glenn Daniel?" Answer: "Yes." Question: "Have you met Mr. Daniel?" Answer: "Yes." Question: "When did you first meet him either in person or by phone?" Answer: "I believe it was March 11th." Question: "March 11th, 2008?" Answer: "Or March 12th." Is that the testimony you gave at that time?
A. Yes, sir. Yes.
Q. Okay. Now, when you did ultimately meet with him, which was either the 11th or the 12th, is it still your testimony that you and he were only in a room for a couple of hours?
A. I know when you asked that question at deposition I wasn't sure of the dates and I think I tried to state that on the record. I believe we met to talk about the specifics of the property. We had some maps on the afternoon of March 11th. I don't remember whether I -- and then I saw him in the evening, and I think it was evening of the next day. And it was for a relatively short period of time. But that's the best that I can recall.
Q. Okay. Let's take a look at your deposition

testimony on page 40, line 11. Question: "Have you spoken with him since March 11th or 12th, 2008?" Answer: "Briefly yesterday." Question: "What did you and

Mr. Daniel discuss yesterday?" Answer: "Basically said hello." Is that the testimony you gave at that time?

A. Yeah. And yesterday was probably March 27th or so.

Q. Yes.

A. That's right.

Q. Yeah, that's right. Okay. And then let's take a look at page 41. Question on line 2. "So he was there a couple hours at the several hour meeting?" Answer: "Yes." Question: "Did you speak with him on any topic? Strike that. Did you discuss any topics specifically and directly with him during that meeting?" Answer: "No." "Were there any particular parts of your report that were discussed at greater length than others in that meeting?" Answer: "No."

Do you want to change any of that testimony?

A. I kind of lost you here. Where?

Q. I'm sorry, I was on page 41, line 2.

A. I couldn't catch up with you, and I thought I could.

Q. I'm sorry.

MR. SHIELDS: Can you specify the date of

the meeting you're talking about.

A. I'm sorry, I just thought I could catch you and I didn't stop you.

Q. Okay. We're on page 41, line 2.

A. Line 2. I'm sorry. Okay. So he was -- now, that would have been on that day we're talking about, or at least I think I'm talking about March 11th.

Q. Yes, I would agree with you, sir.

A. That's what I'm trying to say there.

Q. Okay. My question is with regard to this testimony on page 41, lines 2 through 11, do you want to change any of that testimony?

A. "Did you discuss any topics specifically and directly with him during that meeting?" I said no. I'm not sure why I said no. We had a meeting. That's what you're referring to.

Q. Well, what it says is "did you discuss anything with him specifically and directly?" Do you want to change that testimony?

A. Well, I was part of a group of people and I'm sure he must have asked me a question or two about the property.

Q. Okay. So -- --
A. I'm not trying to hide anything. Maybe I misspoke. He was at the meeting, I'm sure I spoke with

him.
Q. Okay. So your testimony today with the benefit of some hindsight and reflection will be that during the meeting it's likely he asked you a question or two?
A. Yes.
MR. FIERO: Okay. No further questions.
THE COURT: All right. Is there anybody else that is wanting to cross? All right. You're up.
RE-EXAMINATION
BY MR. SHIELDS:
Q. The meeting that was just talked about, Mr. Daniel, on pages 40 and 41 of your deposition was a meeting that took place on March 11th; is that correct?
A. Yes.
Q. And your report in this case, Exhibit 4, was issued on what day?
A. March 10th.
Q. It had already been issued?
A. The day before.
Q. All right. You were asked a lot of questions about could Glenn Daniel have been on a conference call with you, when did you first pass Glenn Daniel in the hall and so forth. I'm going to ask you straight out. Did you ever give Glenn Daniel any indication of your determination of value for the Scopac timberlands prior

to issuing your report on March 10th?
A. Absolutely not.
Q. Did you tell anyone at Houlihan Lokey the same information?
A. Absolutely not.
Q. All right. Now, you did testify in response to a question from Mr. Doren that you learned of an indication of value. And I'm sorry, my notes are not as good as they should be, my LiveNotes is on the blink, but my memory is that you testified that that preliminary indication of value could remember the amount of -- there was one that was $603 million, right?
A. Yes.
Q. Okay. And then you were asked by Mr. Doren and

a few days later you issued your report with a $605 million valuation on Scopac timberlands, correct?
A. Yes.
Q. Did learning of this indication of value at $603 million have one thing to do with your professional work and the opinion that you came to in this case of a value of $605 million?
A. No.
Q. Had you already reached that before you heard the indication of value?
A. That's what I wanted to add. In fact, I was

about to add it when Mr. Doren asked the question. I kind of stopped myself. I had -- as I indicated earlier, I had been working on this project since back in the summertime. And I had, by that time when I learned that number, and I think it must have been in a conference call or something that I was involved with, I had already pretty much committed to where I was. Now, it doesn't mean to say I didn't tinker with values to some extent after I learned that number. But for all practical purposes, I was done with my analysis.
Q. Did learning of the $603 million indication of interest have anything to do with your determination of the $605 million value?
A. Absolutely not.
Q. Had you already come up with that $605 million value before you even heard it?
A. Pretty much.
MR. SHIELDS: Thank you. That's all I have.
THE COURT: All right. You can step down. We will take a break for lunch. Now that you-all have been here for a while, how long does it take you to get out and get back? About an hour? It's an hour? Let's say 2:30 then to be safe.
MR. SCHWARTZ: Your Honor, one last thing.

THE COURT: Yes, sir.
MR. SCHWARTZ: One housekeeping matter before we break. I didn't do this during my examination but if we can move the admission of Exhibit 70 that I asked the witness about.
THE COURT: Any objection? Which one is

it?

MR. SCHWARTZ: Exhibit 70, it was the 2005 presentation by Houlihan. The one that the witness was holding.

MR. SHIELDS: I thought we had an understanding about documents and objections were going to be ruled on --

THE COURT: Why don't we do them all at once.

MR. SHIELDS: I have never seen this before.

THE COURT: Okay. Well, look it over. So they're going to want to introduce that one. All right. Thank you.

(A recess was taken for lunch.)

THE COURT: Be seated. All right. Next witness.

MR. GREENDYKE: Judge, Mr. Clement will be handling the next witness. I'm Bill Greendyke for the

indenture trustee. We have all talked during the lunchtime about the order of how we're going to do things and we thought why not tell the Court what the order is going to be. The next witness is going to be Mr. Daniel, one of our expert witnesses, and then the indenture trustee intends to call Mr. Barrett, one of the debtor's witnesses, Mr. O'Brien, one of the debtors witnesses, and thinking that we may not finish with Mr. Daniel today, those two folks will probably be tomorrow. Mr. Turner is an officer with one of the Beal Bank affiliates and one of the persons who will speak about the Scotia Redwood Foundation. We expect him to testify tomorrow. Our final, probably final witness is a gentleman by the name of Chris Matthews who is a banker with Bank of New York to talk about 1129 A and things like that. He's been here all week, when it didn't look like we would reach him he needed to go back to Houston after having been here since Monday. We sent him back with the agreement of counsel. If we run out of time tomorrow and have to start the debtor's case tomorrow, the lawyers behind me have agreed to allow us to call him first on the 29th. We wanted you to know the line-up.

THE COURT: We're not going to go past 5 tomorrow. We probably will today, unless I fall apart. And I don't plan to do that, so go ahead.

MR. DOREN: We are also -- I'm Richard Doren on behalf of Scotia Pacific. We will also be reserving the right to recall Mr. Barrett and Mr. O'Brien during our case in chief.

THE COURT: Okay.

MR. FIERO: Your Honor, if I might, John Fiero for the Committee. At the end of the day on Friday, there is going to be a rush for the airport which will be complicated significantly by the American Airlines plane shutdown, and I would ask the Court's indulgence if we can end at 3:00 tomorrow to allow some of us to make the flights.

THE COURT: That is fine. That is an extraordinary airplane time. That's not really my call. I don't mind ending at 3:00.

MR. FIERO: Thank you, Your Honor.

THE COURT: As a matter of fact, if I thought I could have gotten away with it, I would have set some stuff would like to do. Very important wine tasting stuff. All right. Let's move on. Mr. Clement, which witness are we calling?

MR. CLEMENT: Glenn Daniel, Your Honor, of Houlihan Lokey.

THE COURT: Okay. Glenn Daniel, number one in your --

MR. CLEMENT: Your Honor, the exhibits that relate to Mr. Daniel are Indenture Trustee Exhibit 7, which is Mr. Daniel's proffer; Indenture Trustee Exhibit 12, what I referred to yesterday as his big report that relates to the valuation of Scopac; and Indenture Trustee Exhibit 13, the smaller report that evaluates the timber notes. Those are his three documents.

THE COURT: Okay. Is he here?

MR. CLEMENT: Yes, Your Honor.

THE COURT: Now would be a good time for him to come forward.

GLENN DANIEL,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CLEMENT:

Q. Good afternoon, Mr. Daniel. Are Exhibits 7, 12

and 13 available to you there?
A. Not yet.
Q. Mr. Daniel, state your full name for the record, please.
A. I'm Glenn Daniel.
Q. By whom are you employed?
A. Houlihan Lokey.
Q. What's your title?

A. Managing director.
Q. How long have you been with Houlihan?
A. 20 years.
Q. Generally what are your job duties at Houlihan?
A. I'm a senior member of our financial advisory group. And I do project work in addition to oversight work and basically a senior function in that particular practice. Project work usually consists of something like a fairness opinion project or something like that. Oversight work is in connection with our transaction opinion review process. We probably issue, you know, in excess of 150 such opinions a year. They're all subject to fairly extensive committee review process. And I usually participate in about 100 such reviews a year.
I'm also a senior member of our technical standards committee with respect to our standards regarding valuation and so forth. And in my spare time, I have just opened an office in Tokyo.
Q. Now, Mr. Daniel, what is Houlihan's market position with regard to issuance of fairness opinions, valuation opinions, things of that sort?
A. Well, we're the number one provider in terms of MNA fairness opinions in the country according to the lead tables. We also do other kinds of transaction related opinions such as solvency work and so forth. And

numerous other valuation related engagements and general advisory engagements.
Q. And that work is done essentially out of the group that you have a responsibility?
A. Correct.
Q. And in your position in that group, you review approximately what percent of all of those valuation opinions?
A. Of the ones that are rendered, probably

two-thirds. Certainly in excess of half of them.
Q. Approximately how many asset valuations have you done in your career?
A. Well, I guess it depends on how you define an asset valuation. I mean, I'm a business valuation specialist, business and securities. And in the 20 years that I've been with Houlihan, I've done well in excess of 500 projects like that. It could approach 1,000.
Q. Now, you mentioned both business valuations and securities valuations, am I correct? Are those both involved in many of those 500 opinions you're describing?
A. Yes.
Q. Sir, have you done an evaluation of the assets of Scopac?
A. Yes.
Q. What is your opinion?

A. Well, my opinion of the aggregate value of the operating timberlands, the MMCAs and the odd assets, cell tower leases, gravel rights and so forth is in a range from $575 million dollars to $670 million.
Q. And with respect to the timber notes that will be issued by Newco under the plan, have you done an evaluation?
A. Yes, I have.
Q. And what is your opinion of the value of those timber notes whose face amount is $325 million?
A. Well, we looked at it under a varying range of interest rates for coupon rates that we thought would be more appropriate than the offered 5 and a half percent. And looking at a range of 8 and a half percent to about 12 and a half percent, just doing the discounted cash flow of math, you come up with a range of about $138 million to about $213 million.
Q. And that's as compared to a face amount of $325 million?
A. Correct.
Q. Now, sir, do you have in front of you Exhibit 7, your proffer?
A. Yes.
Q. Exhibit 12, your report concerning valuation of Scopac?

A. Yes.

Q. Exhibit 13, your report concerning valuation of the timber notes?
A. Yes.
Q. Do Exhibit 7, 12 and 13 explain the bases for the opinions to which you just testified?
A. Yes.
MR. CLEMENT: We offer into evidence, Your Honor, Exhibit 7, 12 and 13.
THE COURT: Any objection?
MR. HALE: Yes, Your Honor, we have a series of objections, myself and Mr. Neier. Your Honor, I'm Brian Hale from Goodwin Proctor on behalf of Mendocino Redwood Company. As it relates to Mr. Daniel's proffer, we have four objections. The first objection is that Houlihan Lokey the firm, has been retained to be the sales agent for the indenture trustee, should that plan be confirmed. That sales agent would manage the sales process and ultimately do the bidding, the marketing procedures, whatever be the case. That sales agent role and the fees associated with that sales agent role represent a contingent interest by the witness in the outcome of the case. It's akin to a contingent fee. He's got -- his firm has an economic motive to seek the indenture trustee plan be confirmed and approved in this

case.
Secondly, these opinions in his proffer, and I think if you read the proffer, they state quite clearly that they are Houlihan Lokey's opinions. They were formed by others on his team. I think as the cross-examination will bring out, the way the opinions were drafted, they're not his own opinions, they're somebody else's and we would suggest Your Honor look at these objections and rule on them after the direct -- after the cross-examination.
Third, Mr. Daniel in his proffer, and specifically in response to the various other experts in this case, asserts various opinions on the timber industry, harvest levels, things like that. I think he will admit on cross he is not a timber expert. Despite that, there's lots of stuff in his proffer about timber opinions and harvest levels and optimization and things like that.
Fourth, we believe that the proffer and his testimony is premised on unreliable and quite

honestly, incorrect and incomplete information about some of the material in that proffer. We would suggest that Your Honor hear the cross-examination and we can revisit these after the cross-examination.

THE COURT: All right.

MR. NEIER: David Neier on behalf of Marathon, Your Honor. Your Honor, our objection is much more limited. It is specifically to one paragraph of Mr. Daniel's proffer, and that would be paragraph 62 of indenture trustee -- 62 on page 20 of Mr. Daniel's proffer.

THE COURT: Okay.

MR. NEIER: This paragraph talks about a business plan that was produced by Marathon that contemplated an integrated mill and timberland similar to Newco and this business plan contemplated substantial layoffs of both the mill and the timberland operations. Yes, it is true before Marathon hooked up with MRC, it prepared a business plan and tried to broker a settlement here. But that document was specifically prepared for Judge Houser. It was part of the mediation process. And this Court's order, Docket No. 1706 paragraph 3 of that order said "all communications made by the parties to their attorneys, to each other or to Chief Judge Houser in connection with the mediation process, the conduct and demeanor of the parties and their counsel during mediation and any documents prepared or produced in connection with the mediation process, including Chief Judge Houser's notes or records, shall be confidential and shall not be admissible in evidence or the subject of

any discovery in any proceeding."

So Your Honor, he's talking about a report that is specifically labeled prepared for mediation that was presented to Judge Houser and then presented to the noteholders, the committee and the other constituents. So this should not be part of any proffer, number one. And number two, it should not be the subject of any evidence adduced at this trial.

THE COURT: Is he correct about that?

MR. GREENDYKE: Give me a moment before I answer the question. What I want to tell the Court was yesterday afternoon about 2:30, 3 o'clock before we started, Mr. Brilliant -- and I'm Bill Greendyke, I represent the indenture trustee -- approached me and said we may have some objections to the proffer of Mr. Daniel. And he highlighted a couple of areas basically that he doesn't have any personal knowledge, he works for a firm and he didn't do the work himself or something along those lines. He doesn't have expertise and incomplete information.

Late last night about 10:30 they floated by a draft objection that they have not filed and they have agreed not to file and handle it this way which we are perfectly willing to do. For the first time we heard this argument that Mr. Daniel might be disqualified

because of the proposal in our plan that he served as -- or the firm served as a sales agent so that's all brand-new to us as of last night. Even though his proffer was presented to them --

THE COURT: I'm not really that concerned about those objections. I think most of those objections go to the weight to be given. I'm not familiar with an objection that a witness is incompetent because he might have a financial stake. I think that might make him biased, but biased, I don't think, is not -- there are certain evidentiary objections that are based on bias, perhaps, but this isn't one of those. But this issue --

MR. GREENDYKE: This is the first time we heard that.

THE COURT: I don't know. Is this the report that you used for that? Is that the report, the mediation report?

MR. GREENDYKE: Judge, I don't know the answer to the question.

THE COURT: Can you-all figure that out?

MR. KRUMHOLZ: Your Honor, it's part and parcel of the disclosure statement which was provided by --

MR. NEIER: It's not true. There's no business plan by Marathon in the disclosure statement.

They are referring to what was known as version 4.1 of a business plan that was part of the mediation. It's labeled prepared for mediation. It was shown to all the witnesses during --

THE COURT: You're saying that's what -- I mean --

MR. NEIER: I would ask Mr. Clement to confirm that that is, in fact, the report we are talking about.

THE COURT: Is that the report?

MR. CLEMENT: Your Honor, what he's referring to as the report provided during mediation, which all the parties --

MR. NEIER: End of story.

MR. CLEMENT: -- agreed to redact and was therefore filed as a public record document. It's on the docket of the bankruptcy court and it was there so that people could see the positions that were being taken.

MR. NEIER: It was prepared for Judge Houser, that's the end of the story.

THE COURT: Wait a minute. Now, if the report -- now there's a new issue here. There's no question that if a document is just a document that was used in mediation and we would excise it from the report. If he inadvertently used it in his plan, perhaps he

didn't realize it. But on the other hand, if you then took the document and made it a public document --

MR. NEIER: I did not, he did. Your Honor, he did. He didn't ask my permission, he just made it part of the public record and he didn't ask my permission for it.

MR. CLEMENT: That's not correct. Your Honor, that's not correct. We consulted with Marathon.

MR. NEIER: No, he did not.

MR. CLEMENT: About redacting that document and we put it on the public record and it's been there since November and they didn't object and ask us to take it off. It's been there since November pursuant to a conversation three ways between the debtors, Marathon and the indenture trustee.

MR. NEIER: Okay. First of all, that's not true. First of all, it's not true but it doesn't matter. It's not admissible, it was prepared for mediation, it was prepared for settlement talks.

THE COURT: You did not agree to it being filed of record?

MR. NEIER: No, absolutely not. We were asked with the debtors to redact certain information and we redacted all of the information that's mentioned in this paragraph 62, by the way. Okay. But that's beside

the point. We were not -- we were not -- our consent wasn't asked for.

THE COURT: I think that it sounds to me as though these -- the part that talks about the business plan should be excised from the testimony. So let's move on.

MR. NEIER: Thank you, Your Honor.

THE COURT: I will hear your objection at the end, but I sort of, as Mr. Jordan calls it, California rule. I don't know if that's the California rule but I'm sort of pre-advising you that it will probably not be a good objection. It will go to the weight to be given to the evidence. Let's move on.

MR. NEIER: You're referring to the other one?

THE COURT: Right.

Q. (By Mr. Clement) Now, Mr. Daniel, you have heard some of what was just put on the record. Let me ask you in somewhat greater detail.

THE COURT: Was there any other objections other than that? Okay. We'll wait on those documents, I guess, until the end to admit them so don't allow me to forget them. Let's move on.

Q. (By Mr. Clement) Does Indenture Trustee Exhibit 12, the large report relating to the valuation of Scopac

reflect your opinions or other people's opinions?

A. My opinions.

Q. Does Indenture Trustee Exhibit 13 representing the valuation of the timber notes, new timber notes, to be issued by Newco reflect your opinion or other people's opinions?

A. My opinion.

Q. When you became involved in this case, were drafts in existence concerning these things?

A. Concerning those two exhibits.

Q. Did you look into those drafts with any diligence?

A. First of all, to answer the first question, yes. And you know, I reviewed those drafts the very first day I was asked to be involved.

Q. And did you, in essence, take the responsibility to make them your own or did you let them be what other people were telling you to say?
A. I substantially revised them both.
Q. Now, sir, with respect to the proffer, which is Indenture Trustee Exhibit 7, does it reflect your opinions or the opinions of other people?
A. My opinions.
Q. And you believe that the opinions set forth in Indenture Trustee Exhibit 7, your proffer, Indenture

Trustee Exhibit 12, your evaluation of Scopac, and Indenture Trustee Exhibit 13, your evaluation of the timber notes, reflect true and honest bases for your opinions?
A. Absolutely.
Q. Now, Mr. Daniel, you've been involved in this case since about when?
A. February 29th.
Q. What did you -- what challenge did you face in evaluating the assets of Scopac?
A. Well, everybody else had been at it for quite a while longer than I had and it's a complex situation. So there was a lot to learn. And a lot to think about with respect to how I would ultimately approach the valuation.
Q. Now, does Scopac present any particular, unusual issues as compared to other companies?
A. Well, I think it's safe to say that Scopac is a fairly unique asset. It is certainly similar in many respects to a few other companies but it has unique aspects. So that in itself presents a challenge. The valuation is basically trying to put yourself in the shoes of an investor. And you know, go through the analytical process that a real investor with real money for a real transaction would undertake in order to -- to basically fulfill the investor's due diligence

responsibilities.
Q. Now, am I correct that Scopac involves timberlands?
A. Yes.
Q. And Scopac had even cash flow over the past few years or not?
A. No.

Q. Does the fact that it involved timberlands require you to obtain any other additional industry expertise?
A. Yes.
Q. And how did you -- what industry expertise did you look to in this case?
A. Well, fortunately Houlihan Lokey had been advised by several forestry experts for quite some time, Jim Fleming is one, Bill Kleiner was mentioned earlier, he's another, and there were others. And they had put in considerable time studying the asset. And they were extremely helpful to me in terms of getting up to speed quickly. I had to understand the basics in order to be able to really move forward with something meaningful from a valuation perspective.
Q. Now, sir, did you conclude that there were any tax advantages concerning timber companies, whether they be in a C Corp, REIT, MLP structure?

A. Well, I have to provide a little background in order to be able to answer that question. The tax status of -- it's more the tax status of the comparable companies that matter here as opposed to the expected tax status of transformed Scopac. I think it's certainly my assumption that Scopac will, in fact, be sold at some time, either sooner or later in some respect or another.
And once that happens, it's likely to be placed in a tax efficient entity. I think it's likely that the buyer would view it in that regard. Therefore, to try to find valuation benchmarks, which is what our job is basically, one should look at similarly -- similarly positioned and structured companies to provide any guidance. Now, as I mentioned before, it's not easy to find direct comparables for Scopac. That's what a valuation professional always does and an investor for that matter for a quick and dirty way to come up with an answer to provide some context and some direction.
Unfortunately, I mean, other than the history that's occurred here, there wasn't much available by looking at public companies or, you know, the usual kinds of measures.
Q. Now, sir, in view of that learning, did you evaluate Scopac with any assumption about whether it would be in a tax efficient -- its assets would be in a

193

tax efficient corporate entity or not?

A. Well, as I mentioned, our job is to put ourselves in the shoes of an investor and we believe that that would be an investor's expectations.

Q. Did you conclude that past cash flows were a reliable basis for evaluating the business?

A. No.

Q. Did you conclude that there were good sale comparables available?

A. No.

Q. What ultimately did you conclude was the best basis to use to evaluate this business?

A. Well, our starting point really had to be looking at sort of the fundamental underlying basis of value, which is cash flows, you know, that can be returned from the business, plus a return that's adequate to take on the risk of, you know, getting involved in the first place. So we proceeded down that road. And I started, my colleagues had earlier started the work of interacting with our timber experts to quantify those expected cash flows.

Q. Now, once Jim Fleming had completed his expert report, was it shown to you?

A. Yes, it was.

Q. Did it contain a harvest forecast?

194

A. It did. I had seen a basic version of his cash flow and harvest forecast before I saw his report or we never could have completed this analysis. So he shared a lot of that detail with us, but basically kept his own kind of analysis of value to himself. It was really irrelevant to us in any case.

Q. Did you examine those cash flow forecasts?

A. Yes, I did.

Q. Did you talk with Mr. Fleming?

A. Yes, I did.

Q. Did you reach a conclusion about whether it was appropriate for you to rely upon his expertise as expressed in his valuation report, including his cash flow forecast?

A. Well, his cash flow forecast was the part of it that I relied on. I was really not concerned with the valuation part. And yes, I did come to the conclusion that it was reliable information and that I should rely on it.

Q. In the process of obtaining industry expertise, did you have any discussions with Mr. Kleiner, for example?

A. Yes, I did.

Q. Can you describe generally what those were?

A. Well, there was ongoing interaction between

Mr. Fleming, Mr. Kleiner, myself, my colleagues, various attorneys from Fulbright on pretty much an ongoing basis from at least the week of March -- it would have been the 10th, pretty much through to today. I had had previous conversations with Mr. Fleming before that. And as I mentioned, I had had access to the cash flows before that as well. I spent a fair amount of time with all those people.

Q. Did Mr. Kleiner give you an overview of the properties?

A. Yes, he did.

Q. How did he do it?

A. Well, he's quite familiar with the properties, and unfortunately there wasn't time for him to put me into a buggy and cruise me through the timber, which is how he would have had to do it. But he was able to give me a lot of background by showing me a number of maps and aerial photographs and so forth. And I spent a number of hours with him, as he explained.

Q. After you reviewed Mr. Fleming's cash flows and spoke to Mr. Fleming about how he created them, did you conclude that they were an appropriate source for you to rely upon?

A. Yes.

Q. After you talked to Mr. Fleming -- or

Mr. Kleiner, did you conclude that he was an appropriate industry source to rely upon?

A. Well, there was some back and forth here as well. I mean, I didn't take any individual's word for it. Fortunately I had access to more than one expert.

Q. Now, moving on forward, did you then, taking that industry expertise as it invited itself and these cash flows, apply corporate valuation techniques of the sort that you're generally familiar with?

A. Yes.

Q. And generally, what sorts were those?
A. Well, we did a discounted cash flow analysis, and basically that required taking the cash flow framework and deciding what the appropriate return would be with which to discount the cash flow. That's what I was discussing before. And then we had to flesh out the framework because we're using a ten-year horizon, which requires a terminal value, as does the 50-year for that matter. But the terminal value format and the way we calculated it was developed after we understood the nature of the property and what it meant for the valuation in light of Mr. Fleming's harvest scenario, all of which was really interrelated.
MR. BRILLIANT: Your Honor, I believe Mr. Clement is well past his 15 minutes. We had a note

197

sent to him.
MR. CLEMENT: Mr. Neier went on 25 minutes. We have only a few questions and it will be very brief.
THE COURT: All right. Go ahead.
Q. (By Mr. Clement) Mr. Daniel, when you evaluated the timber notes, did you start with the premise of the business plan that was shown in the disclosure statement?
A. Yes.
Q. Assuming it to be true, did you apply normal valuation techniques that you've used in evaluating securities?
A. Yes.
Q. Now, finally, Mr. Daniel, I'll ask you, did you hear Mr. Dean testify yesterday that he made in the year 2006 an offer to buy the stock of Palco for $20 million?
A. I did.
Q. What enterprise value did that imply?
A. Well, given the debt that existed at that time, $781 million.
Q. Did you hear Mr. Dean testify yesterday concerning whether increase in forest inventory is taken into account in his cash flow analysis?
A. Yes.
Q. Now, we had on the board yesterday Marathon

198

Exhibit 61. Does it show any buildup of inventory over time?

A. I'm not sure which exhibit you're talking about.
Q. It has multi colors on it and it's a 50-year projection.
A. Yes, okay, yes, it did.
Q. How much buildup does it show over time?
A. Over 50 years, about a million and a half board feet.
Q. Does Mr. Dean's model contemplate cutting all of that addition to --
A. No.
Q. Does Mr. Dean's model take into account the value of the inventory not proposed to be cut?
A. No.
Q. When you did your DCF analysis, did you take into account indications of interest to buy Scotia's properties?
A. Yes.
Q. Was one of those indications of interest the so-called Beal Bank indication of interest?
A. Yes.
Q. Did you have an opinion concerning the reliability of that indication of interest?

A. Yes, I did.
Q. What was it?
A. I thought that that indication of interest as well as the other two that we relied on were invaluable and reliable pieces of information.
Q. Has your opinion of that indication of interest changed at all over time?
A. Well, I've come to the conclusion now that I was correct in at least the Beal offer appears more reliable at this point than it did at that point.
Q. And is that premised upon any documents that you've seen in the last 24 hours?
A. Well, I've seen a signed binding offer from him that provides no out except for a something clause. It has the tightest.
MR. CLEMENT: Your Honor, we pass the witness for cross-examination. We have sent a few moments extra concerning the witness's qualifications given the nature of the motion, and we pass the witness for cross-examination.
THE COURT: All right.

MR. BRILLIANT: Thank you, Your Honor. Alan Brilliant on behalf of Mendocino Redwood. Your Honor, to be efficient, what Mr. Neier and I have agreed, subject to Your Honor's indulgence, is I had originally

deposed Mr. Daniel and will cross him with respect to his reports.

THE COURT: Okay.

MR. BRILLIANT: With respect to in his proffer, Mr. Daniel has some critiques of Marathon's experts which, you know, is Mr. Neier's expertise, and rather than him hand me notes, our thought was we divide it up that way. Is that okay with Your Honor?

THE COURT: Okay.

MR. BRILLIANT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BRILLIANT:

Q. Mr. Daniel, as you sit here today, is everything in your two reports and your proffer true and accurate, to the best of your knowledge?

A. To the best of my knowledge, yes.

Q. Who wrote your proffer?

A. I did.

Q. How much of it did you write? Did you write all of it?

A. Do you mean did I put pen to paper for all of it?

Q. Yes.

A. No.

Q. How much did you put pen to paper for?

A. I reviewed and edited all of it.

Q. Who did the original draft?

A. One of my colleagues. Actually, several of my colleagues probably worked on pieces of it.

Q. And who were they?

A. To be honest, I'm not sure which one of them wrote which part of it. But Mr. Winthrop, Mr. Hanson, and Mr. Meyer would have been involved.

Q. And what about Mr. DiMauro?

A. To my knowledge, he had nothing to do with it.

Q. You say to your knowledge. Is it possible that he had anything to do with it?

A. It could be.

Q. You're not a timber expert, correct?
A. No, I'm not.
Q. Never appraised timberlands before, correct?
A. No, I haven't.
Q. In the last 20 years, other than Scopac, you've not valued a timber company; is that right?
A. I have not.
Q. Since you last looked at any forest products companies, everything in the industry has changed; isn't that right?
A. Well, I mean, I last looked at a forest products company, at least related to forest products on

202

the purchase of paper by the alpha Scopac, that's not a timber company, but prior to that, the last time I spent an in-depth amount of time on paper forest products companies was when I was at moody's.
Q. And that was over 20 years ago?
A. Yes, it was.
Q. And has everything in the industry changed since then?
A. Yes, it has.
Q. You're not a registered forester?
A. I'm not.
Q. You're not a forester at all; is that right?
A. That's correct.
Q. No training in forestry?
A. None.
Q. You're not holding yourself out to be a timber expert in any way; isn't that right?
A. That's right.
Q. You're not qualified to critique timber expert reports such as Mr. Reimer's, are you?
A. That's fair to say.
Q. I ask you to turn to your proffer, page 21.
A. Okay.
Q. Paragraph 65. I ask you to let me know if I read this correctly. "The Yerges report utilizes timber

203

in something details and a 50-year harvest forecast from Don Reimer. (The 50-year forecast) a number of key assumptions contained in the 50-year forecast appear unreasonable including timber growth, price appreciation and EBITDA margin expansion." Did I read that correct?

A. Yes.
Q. You just told me that you're not qualified to critique Mr. Reimer. Aren't you critiquing Mr. Reimer's 50-year forecast here in this paragraph 65?
A. I'm critiquing Mr. Yerges's report.
Q. So do you believe that even though you have no timber expertise, that you're capable of critiquing a 50-year harvest forecast?
A. In this context, yes.
Q. So would you say that -- what do you mean when you say that you're not capable of critiquing Mr. Reimer?
A. Well, Mr. Reimer is highly technical. And you know, his information then gets transmitted through to a valuation conclusion by Mr. Yerges, similar to what I've done with Mr. Fleming's work.
Q. So are you an expert on timber growth?
A. I'm an expert on financial analysis.
Q. I appreciate it if you would answer my question. Are you an expert on timber growth?
A. No, I'm not.

Q. Are you an expert on price appreciation for logs?
A. No, I'm not.
Q. Are you an expert on harvest forecasts?
A. I'm becoming one. No, I'm not an expert.
Q. Okay. So if you're not an expert on harvest forecasts, timber growth or price appreciation of logs, how are you able to testify in your proffer as to whether or not a forecast with respect to these things is reasonable?
A. Well, Mr. Yerges isn't an expert either, and it's his work that I'm critiquing.
Q. So as it relates to Mr. Reimer, it's his forecast, but as to Mr. Reimer you're not critiquing, you're critiquing the way Mr. Yerges --
A. I haven't even read Mr. Reimer's report.
Q. Your report relies on Mr. Fleming's cash flows, correct?
A. Correct.
Q. Were you here today when Mr. Fleming testified?
A. Yes, I was.
Q. And did you hear Mr. Fleming's testimony that he never spoke with you on the phone prior to your meeting on March 11th?

A. His memory fails him.

Q. So you're saying that Mr. Fleming is incorrect?
A. He made a mistake, yes.
Q. And you had one phone call with him prior to that?
A. I spoke with him for about three hours on the afternoon of, let's say, 29th -- the 4th, I believe. Is that right? I think the 4th of March.
Q. And after a three-hour conversation with Mr. Fleming, that was your entire due diligence on his model; is that right?
A. Incorrect.
Q. That was your entire conversation with him on his model prior to finalizing your report; isn't that correct?
A. No.
Q. Isn't it true that prior to your meeting on the 11th that you had substantively completed your report?
A. We made a number of changes between then and when it was submitted on the 14th.
Q. Do you remember that I deposed you?
A. I do.
Q. Can you find Exhibit MMX --
A. I don't have it.
MR. BRILLIANT: May I approach, Your Honor?

THE COURT: You may.
A. Okay. What page?
Q. Give me a second, please. Turn to page 222, line 6. Question -- let me know if you remember me asking you these questions and giving these answers. Question: "When you say it was substantially substantively complete on Tuesday, March 11, was it complete before the meeting with Mr. Kleiner or Mr. Fleming or was it complete, completed afterwards?" Answer: "Before." Do you remember me asking you that question and you giving that answer?
A. I do but I don't remember quite that many completes.
Q. Okay. But you don't think -- you think this is an accurate transcription of your deposition, don't you?
A. We made a number of changes after that time. I

don't believe we changed any of the cash flow numbers. I don't believe that our conclusions changed substantially, but we did a tremendous amount of due diligence between that date and when we submitted our report. When I say "we," I mean primarily me.
Q. We'll get to that in a minute. In your report you're adopting the analysis of Mr. Fleming on the timberlands and the harvest rate; is that correct?
A. Correct.

Q. In fact, when I took your deposition, you did not even know the historic harvest rates or even the fact that the harvest rate for Scopac had gone down over the last several years; isn't that correct?
A. Yes, but I know them now.
Q. But you didn't know them when you finalized your report; isn't that correct?
A. I didn't know them the way I know them now.
MR. BRILLIANT: I'd appreciate, Your Honor, if you'd ask the witness to answer my questions.
THE COURT: You have to answer his questions and then your table will redirect you on whatever they think is appropriate.
THE WITNESS: I'm sorry.
A. No. I mean, I wasn't able to answer your question clearly in the deposition.
Q. So the answer to the question is no, right?
A. Yes, that's correct.
Q. You did not know?
A. Correct.
Q. And Mr. Fleming's cash flows are premised on his harvest schedules, correct?
A. Yes.
Q. And you're adopting Fleming's cost assumptions?
A. Yes.

Q. Did you examine any of the proposed stands to be cut or confirm that the schedule followed all applicable regulations, including adjacency issues?
A. Well, neither did Mr. Fleming.
Q. Would you answer?
A. He took a more average approach so, of course, I didn't because I'm relying on his work.
MR. BRILLIANT: Your Honor, I move to

strike and ask that you direct the witness to answer the question.

THE COURT: Did you answer the question that he asked?

A. I didn't examine any stands, I think that's the question that you asked.

Q. That is the question. Thank you for answering.

A. I did not.

Q. And you say Mr. Fleming didn't examine any stands either; is that right?

A. Nothing specific to my knowledge.

Q. Other than your conversations with Mr. Fleming, you did no independent analysis of Mr. Fleming's harvest rate; isn't that correct?

A. No, I don't think that is correct.

Q. Can you turn to page 198, line 2 in your deposition, please.

A. Okay. Yes.

Q. Question -- let me know if I asked you this question and you gave this answer. Question: "And so you're adopting his analysis or are you saying that you have -- you have independently done an analysis as to how many trees" -- you interrupted me and you answer: "No, I'm adopting his -- I'm relying on his analysis." Is that the --

A. That's correct.

Q. You know what, we probably should go back to the previous page to put it into context, 197 line 22, the question and answer right before that. Question: "Are you relying solely on Mr. Fleming with respect to this, or is this your own analysis of the potential harvest rate for the company?" Answer: "It's Mr. Fleming's analysis." And then the question we just asked. Question: "And so are you adopting his analysis, or are you saying that you have -- you have independently done an analysis as to how many trees" -- Answer: "No, I'm adopting his -- I'm relying on his analysis." Is that correct?

A. That's correct.

Q. So you did not do any independent analysis on his harvest rate, at least prior to the deposition; is that correct?

A. No, I didn't do my own independent analysis of the harvest rate.
Q. Thank you. And in fact, in addition to the other things you're adopting, you're also adopting Mr. Fleming's assumptions of log pricing; is that correct?
A. Correct.
Q. So if Mr. Fleming's analysis is wrong, then your valuation report is also wrong; is that right?
A. Correct.
Q. So prior to your getting involved, Houlihan Lokey had been engaged on the Scotia Pacific matter for several years, correct?
A. Yes.
Q. And you're working on behalf of the indenture trustee and prior to that, you know, noteholders of Scopac's secured notes; is that right?
A. Yes.
Q. And Chris DiMauro is the managing director of Houlihan, is he not?
A. Yes, he is.
Q. He's responsible for this financial advisor engagement for the indenture trustee; is that correct?
A. As far as I know. I don't know the precise details of who's in charge of it, but he has a role in

that respect.
Q. Are you aware of whether Mr. DiMauro has testified or proffered testimony in this case at any prior hearings?
A. I don't think he's -- I don't know if he's participated in a hearing. I'm aware of a declaration that he filed in September of 2007.
Q. And although Mr. DiMauro is the most active person from Houlihan on the senior level in this matter, he's not testifying at this hearing; isn't that right?
A. Correct.
Q. And you say you're aware of the fact that Mr. DiMauro offered a prior declaration in this case in September 2007; is that right?
A. Yes.
Q. And have you reviewed that declaration?
A. Yes.
Q. And in that declaration, Mr. DiMauro testified as to a value of the same assets as covered in your

proffer; is that right?
A. Correct.
Q. And his range valuation is much different than yours; isn't that correct?
A. It's lower than mine.
Q. His valuation was $375 to $500 million based on

the BCF analysis and $290 to $460 million based on the guideline company's analysis; isn't that right?
A. Well, that sounds correct although I don't remember precisely.
Q. Do you have MMX 11 up there?
A. What is that?
Q. That would be Mr. -- that would be Mr. DiMauro's report?
A. No, I don't have it.
THE COURT: It's probably on one of the binders on the floor. You need MMX 11.
Q. (By Mr. Brilliant) Mr. Daniel?
A. Yes.
Q. Have you ever seen this document before?
A. Yes, I have.
Q. And is this the declaration of Chris DiMauro that you mentioned earlier?
A. I believe it is.
Q. Can you turn to page 11 of the declaration.
A. Okay.
Q. At the top it says Exhibit A?
A. Yes.
Q. Discounted cash flow analysis?
A. Yes.
Q. Does looking at this DCF analysis refresh your

recollection as to the total enterprise value arrived at under a DCF by Mr. DiMauro?
A. No.
Q. Okay. How about if you -- can you read paragraph 14, it starts on page 5 and ends on page 6.
A. "Houlihan Lokey has completed a preliminary discounted cash flow analysis using the company's ten-year harvest plan, see Exhibit A, applying an illustrative market based discount range of 10 percent to 13 percent with an illustrative market face residual capitalization range of 7 percent to 9 and a half

percent. Scotia Pacific's income generating properties are estimated to be valued at approximately $375 to $500 million."
Q. Does that refresh your recollection as to the results of Mr. DiMauro's discounted cash flow analysis?
A. Yes.
Q. Isn't it true that the people who helped you draft your report also helped Mr. DiMauro draft Exhibit MMX 11?
A. I really don't know. I mean, I assume that he got some help with it, but I don't know who helped him.
Q. Is your team substantially similar to -- with the exclusion of Mr. DiMauro, is your team substantially similar to all of the people who are working on the

financial advisory side of Houlihan Lokey for the indenture trustee?
A. I don't know. I wasn't there.
Q. Are you familiar with the indenture trustee's plan?
A. Yes, at a high level.
Q. Are you aware that the indenture trustee proposes to auction off Scopac under the supervision of a sales agent?
A. I would expect that that would be the way it would be undertaken.
Q. Is that the way it would be undertaken or you would just expect it?
A. I don't know. I don't know. It would make sense, yes, because that's the way it's normally done.
Q. Have you ever reviewed the plan of the reorganization filed by the indenture trustee?
A. No, I haven't.
Q. Have you ever reviewed the disclosure statement, the joint disclosure statement filed in connection with this confirmation hearing?
A. I have reviewed parts of it but I couldn't begin to tell you which ones.
Q. But you've never reviewed the plan of reorganization?

A. And as I mentioned, at a very high level. I read, for example, the summary that was written for the disclosure statement but I didn't read the plan.

Q. Have you ever had any conversations with anybody about the indenture trustee's plan?
A. Well, it's come up along the way, but specifically, no.
Q. Are you aware that Houlihan is designated as the sales agent under the plan?
A. It wouldn't surprise me.
Q. But you're not aware of it?
A. No, I'm not.
Q. As sales agent, would you expect that Houlihan would be entitled to a fee for that work?
A. Of course.
Q. So if the indenture trustee's plan is confirmed and if Houlihan is the sales agent under that plan, they might be entitled to a large fee if the assets are sold; isn't that right?
A. That's correct.
Q. Would it be reasonable to expect that in a sale of this size that the fee would be millions of dollars?
A. Most likely.
Q. Who is Jeff Werbalowsky?
A. Our CEO.

Q. Now, on direct examination earlier you testified that Houlihan is number one in fairness opinions in MNA around the country; is that right?
A. In terms of number of opinions rendered in closed transactions, yes.
Q. Closed transactions from publicly traded companies?
A. Well, MNA, and some of them are closer to private, some are private to private. I guess it would have to be publicly disclosed so those are public deals as it comes from something.
Q. But Houlihan is a large company, isn't it?
A. Correct.
Q. How many employees do you have?
A. Something north of 800.
Q. 800 professionals or 800 total?
A. 800 total.
Q. How many offices do you have?
A. Eight in North America, three in Europe, two in Asia.
Q. And with respect to one of the Asia offices, is that the Tokyo office?

A. Correct.
Q. Are you in charge of getting the Tokyo office up and running?

A. Yes.
Q. Being the co-CEO of Houlihan Lokey, that's a big job, isn't it?
A. Yes.
Q. Over managing 800 employees?
A. Yes.
Q. Multiple offices?
A. Yes.
Q. All around the world?
A. All around the world, yes.
Q. Difficult job, right?
A. Yes, I would say so.
Q. Who's Irwin Gold?
A. Irwin Gold is basically the cofounder with Jeff of our restructuring group.
Q. Senior guy at Houlihan?
A. Yes.
Q. On the Board of Directors?
A. Yes.
Q. One of the top people in the firm?
A. Yes.
Q. Now, you speak with the two of them very infrequently, right?
A. Correct.
Q. And I believe you testified earlier that your

involvement with this case first started on February 29, 2008; is that right?
A. Correct.
Q. And the first time you were contacted about this case was you received a phone call on February 29th from Chris DiMauro; is that right?
A. That's correct.
Q. And your additional involvement started with that call, right?
A. Well, yes. Yes, it did.
Q. Okay. And during that initial call, you indicated in substance that you were not sure you had the time to spare for this matter given your other engagements; isn't that right?

A. That's correct.
Q. Now, when you indicated you didn't have time to do this assignment, Irwin Gold miraculously joined the call with Mr. DiMauro; is that right?
A. Yes.
Q. And you don't now how he got on the call, right?
A. I'm told it's a coincidence.
Q. And you told Irwin Gold that you were not sure you could spare the time because you had a lot to do, didn't you?

219

A. Not quite as vehemently, however.
Q. But you did tell him you didn't have --
A. Yes, I did.
Q. And then the next thing you knew, Jeff Werbalowsky, the co-CEO of the firm, he also joined the call; is that right?
A. Yes.
Q. And you don't know how he joined the call?
A. Coincidence, I'm told.
Q. And Mr. Werbalowsky, the co-CEO of Houlihan said to you, and I quote "you really are going to do this, aren't you?"
A. Well, I think I probably said that in my deposition, yes.
Q. But to the best of your recollection, isn't that in fact what he told you?
A. Well, that was my best paraphrase of it at the time you asked me.
Q. Now, it's unusual for Mr. Werbalowsky and Mr. Gold to get on a call and ask you to take on an assignment, isn't it?
A. Indeed.
Q. And they told you that this was an important assignment for the firm, right?
A. Well, I think it's an important assignment just generally speaking.

220

Q. Sir, I asked you --
A. I'm sorry. Yes, they did tell me it was important.
Q. And they told you that the clients were important to the firm, didn't they?

A. All our clients are important to us. And I don't think --
THE COURT: You're answering questions that you want rather than what he asked.
A. I'm sorry. I don't know that they referred to the clients. I don't think they did, actually.
Q. Okay. Again, you probably recall that I deposed you. Can you please turn to your deposition transcript, 191, line 9.
A. What line, please?
Q. We'll come back to that. Okay. 192, line 9. Sorry. Did they tell that you this was an -- question: "Did they tell you that this was an important assignment for the firm?" Answer: "Yes." "Did they tell you that the clients were important to the firm?" Answer: "Yes." Does that refresh your recollection?
A. Well, that's what I said then. It's been -- more time has passed, I don't remember that at the moment.

Q. And they told you that it was very important that you do this work; isn't that right?
A. Yes.
Q. And after that, you were stuck on this assignment, correct?
A. Well, there weren't many alternatives and it needed to be done.
Q. And you viewed it as your duty to take on the assignment; isn't that right?
A. I think that's what I told you in the deposition.
Q. I want to -- let me ask you -- well, you told me in the deposition and I asked you if you viewed it as your duty to take on the engagement.
A. Yes, and I still do.
Q. Now, Mr. Daniel, did anyone on your team ever lie to you or mislead you regarding this engagement?
A. Not that I know of. They wouldn't be on the team any longer if they had.
Q. Isn't it true that after the February 29th call someone on your team told you that it was a coincidence that Mr. Werbalowsky joined the call?
A. Well, you know, I said as much right here.
Q. And someone told you that; isn't that right?
A. That may very well be the case.

Q. But you don't believe that statement to be true, do you?
A. It's possible. I mean, they were talking a lot at that time, and it's possible that he could have just been waiting to talk.
Q. Sir, do you believe that statement to be true?
A. I think it could be true.
Q. Okay. Can you turn to page 190, line 18, please.
A. Okay.
Q. Actually, let's start at 17 with the question. Question -- we'll go back a little bit. We can start there. Question: "You don't know?" Answer: "I mean, I -- Chris or somebody told me that nobody asked him to join them and it was a coincidental, but I don't believe that." Did you say that?
A. I said that in the deposition, yes.
Q. At the time you said it, you were under oath; isn't that right?
A. Right.
Q. And you wouldn't have said it if that wasn't true and that wasn't what you believed; isn't that right?
A. At the moment that was true.
Q. And on February 29th, same day that you received a call from Mr. Werbalowsky and were told that

you were going to work on this, weren't you, you received a draft of a report that was e-mailed to you; isn't that right?
A. That's correct.
Q. And the e-mail that was sent to you was a PDF file; isn't that right?
A. Yes.
Q. So even if you wanted to, you couldn't change the text of that report by yourself; isn't that right?
A. Well, that's not really true, but -- because you can change a PDF, but I didn't.
Q. Isn't it true that you never marked up your report with a pencil and sent it back to people; isn't that right?
A. That's correct.
Q. And any comments that you had were conveyed orally to the members of the restructuring team; isn't

that right?
A. Correct.
Q. And the ultimate opinion in your report did not vary significantly to the draft report you first received on February 29th, did it?
A. You know, I don't remember what the conclusion was in that report as I sit here now. My recollection was undoubtedly fresher in the deposition. And I believe

I said then that it didn't differ, you know, significantly. So I'll go with that.
Q. Well, this isn't a guessing game, Mr. Daniel.
A. If I knew definitively, I would tell you.
Q. But you acknowledge that in your deposition you said something to the effect that it did not vary significantly; is that right?
A. I believe I said something to that effect.
Q. And they sent you a draft of the timber note valuation report that day as well; isn't that right?
A. Yes, they did.
Q. And the conclusion on that report didn't change much either, did it?
A. Well, I think that I said that in the deposition as well, but I don't remember what the initial conclusion was.
Q. I'm not --
MR. BRILLIANT: You know, Your Honor, can you please ask the witness to answer my questions. He's answering the questions he wants to answer.
THE COURT: Well, in this particular case I think he was trying to be brief by saying I don't remember now, but I do remember I said that in my deposition.
MR. BRILLIANT: We'll move on. I think

they're close. I think they're close.
THE COURT: Okay.
Q. (By Mr. Brilliant) So at the time that you were first asked to be involved in this matter, there was already a draft of your report; isn't that right?
A. Well, no, it wasn't because I hadn't been involved up to that point.
Q. But there was a draft that was sent to you after your CEO told you that you were going to have to

testify in this case; isn't that right?
A. It was a draft that was sent to me after the conversation we just discussed.
Q. Now, as of the time of your deposition you told me you didn't know precisely who had put together the draft report; is that right?
A. That's correct.
Q. Do you know today?
A. No, I don't.
Q. And the opinions you're testifying today regarding the valuation haven't changed substantially from the opinions in your draft report that was e-mailed to you; isn't that right?
A. That wasn't my report.
Q. Well, the -- the draft report that you received that day.

A. That's what my deposition says. I have no recollection of the number as I sit here right now.
Q. And the final report on the valuation of the timber notes compared to the draft of the report that was sent to you in February 29th changed even less than the valuation report; is that right?
A. If I said that in the depo, it must be true, but I don't recall saying it.
Q. Would you like to look at the deposition and have --
A. I'll take your word for it.
Q. Now, when I asked you at the time of your deposition whether your report used a preliminary bids received as a separate approach to valuation, you didn't even know -- and now we're talking about your final report. You didn't even know that your final report was prepared in that way, did you?
A. I didn't remember the precise way that it was used for that particular purpose.
Q. Okay. Let's turn to page 226, line 13 in your deposition. Question: "So using the three, the three reports and the separate methodology for valuing the companies was something that happened after you became involved?" Answer: "Well, it's not a separate methodology for valuing the company, it's an approach

determining the discount rate combined with the weighted

average cost of capital analysis that we use."
    A. Yes.
    Q. Is that the question I asked you and is that the answer that you gave?
    A. Correct.
    Q. And so you didn't know at that time that the use of the three reports were a separate methodology; isn't that correct?
    A. I didn't remember. It was getting a little late.
    Q. Well, it was only 4:26 in the afternoon, and if I remember right, we started --
    A. And we went to almost 9 o'clock.
    Q. So we were only about halfway done at that point in time. But the bottom line --
    A. I was still getting tired.
    Q. Well, we'll come -- we'll do this right now. And at that point in time, you also told me that you thought it would be inappropriate if you would have used those three letters to be a separate methodology; isn't that right?
    A. Yes.
    Q. And do you still believe that today?
    A. I don't believe it's inappropriate to have used the methodologies in the way that we did in our report as it was issued. At that point, I just didn't remember.

    Q. Okay. Well, let's go to page 228, paragraph 13. Are you with me, Mr. Daniel?
    A. Yes.
    Q. Question: "Okay. And is it -- do you think it would be appropriate as a separate approach to value the company based upon three non-binding expressions of interest?" Answer: "You mean solely on that?" Question: "No, I said as an approach, one that might be averaged with other approaches or taken into account in consideration along with other approaches. Do you think that would be inappropriate?" Answer: "No, I don't think it would be, certainly not averaged in because it's not a final number, it's not something that happened. I mean, when we look at transaction approaches we use deals that, you know, happened, the ones that were considered." Question: "Okay." Answer: "And one reason that I think it would be inappropriate is because the numbers are low and, you know, whoever wins is probably going to pay more

than that."

Didn't you testify at that time that you thought it would be inappropriate to use it as a separate methodology?

A. I did.

Q. Mr. Daniel, you're managing director at Houlihan, correct?

A. Yes, I am.

Q. One of the senior people in the financial advisory group that does valuations?

A. Yes.

Q. Ordinarily you pick your own teams; isn't that right?

A. No.

Q. So ordinarily they're assigned to you by others?

A. It depends on the circumstances. I'm a bit of a utility player. And for the last several projects I've worked on, I don't think I picked anybody on the team.

Q. Okay. And with respect to this report, you didn't select your team, did you?

A. No, I didn't.

Q. Your team came with the project, correct?

A. Yes.

Q. And in fact, other than Mr. DiMauro, you didn't know any of the members of your team; isn't that right?

A. Well, I knew Mr. Winthrop, although I don't spend a lot of time interacting with the FRG people down in the Los Angeles office. I'm based in the San Francisco office.

Q. You had met Mr. Winthrop, right?

A. Yes, I had.

Q. But you didn't really know him, right?

A. Correct.

Q. You didn't know his reputation?

A. No.

Q. And you hadn't worked with him?

A. I had not worked with him.

Q. And you didn't know whether he had any experience doing valuations; isn't that right?

A. I didn't know what his experience was.

Q. So you didn't know his experience doing

valuations, correct?
A. Correct.
Q. And Mr. Winthrop, Mr. Hansen and who was the other member of your team?
A. Mr. Meyer.
Q. And they work with the indenture trustee in connection with this matter, correct?
A. Yes.
Q. And you said you don't know who drafted your -- the draft report that you received on February 29th, but I take it you would think that Mr. Winthrop, Mr. Hansen and Mr. Meyer had some role in that, wouldn't you?
A. Yes. What I mean by drafting is typing. I didn't type it, but I had a significant influence in the drafting.

Q. But not the draft report that you received on February 29th?
A. No, no.
Q. Mr. Daniel, you testify frequently in court proceedings, don't you?
A. Not so much anymore.
Q. But you've testified in court more than 20 times; is that right?
A. Yes, I have. I take that back. Not every time in court. I have testified as an expert probably two dozen times, sometimes just depos.
Q. I'm sorry, you say two dozen times?
A. Yes.
Q. Well, as I said, more than 20 times. I think two dozen times is consistent. And you've been retained as an expert witness in even more cases than that, correct?
A. Yes.
Q. It's fair to say that you've been retained as an expert witness in more than 30 cases; isn't that right?
A. Yes.
Q. All right. So let's talk a little bit about the first week that you started working on the report.

A. Okay.
Q. You received the draft report on the 29th, correct?

A. Yes.
Q. But you really didn't get started on the project until Tuesday, March 4th conference call; isn't that right?
A. March 4 was a Thursday. I talked -- I had a conference call with the team on Tuesday. It would have been the 2nd.
Q. There's 29 days in February this year, is that right, and that was a Friday?
A. You're correct.
Q. And then so Saturday, Sunday, Monday, Tuesday, March 4th would have been Tuesday; is that right?
A. Yes, you're right.
Q. And you had a conference call with your team on March 4th?
A. Correct.
Q. And that was really when you got started on the project; isn't that right?
A. Yes. I had earlier testified that that was when my conference call with Mr. Fleming was. Obviously it was the 6th and not the 4th, just to correct that.

Q. Thank you for that, Mr. Daniel. And your report, sir, was substantively completed on March 11th, right?
A. Yes.
Q. So you got started on the 4th and it was finished on the 11th?
A. Yes. It wasn't finished on the 11th as I earlier testified to.
Q. It was substantively completed on the 11th, isn't that what you testified at your deposition?
A. Yes.
Q. And the report was turned over to the other parties in the case on March 14th; is that right?
A. Yes.
Q. So you spent about one week working on the substance of your report; is that right, the 4th through the 11th?
A. Well, as I pointed out, I did a lot more work before the 14th. We were working pretty much constantly from the time we started.
Q. I'd appreciate it if you would answer the question, Mr. Daniel. So you spent about a week working on the substance of your report; isn't that right?

A. Well, no, that's not correct.
Q. Now, you never marked up your draft report or

made any changes to the document itself; isn't that right?
A. Correct.
Q. And during the beginning of March, you had other engagements that you were working on during this time; isn't that right?
A. Nothing that I couldn't substantially set aside.
Q. If you turn to page 224 of your deposition.
A. Yes.
Q. Question on line 8. Question: "Okay. And during this period you still had other client responsibilities and other management responsibilities at Houlihan that you were attending to; is that right?" Answer: "Some, but I set a number of things aside."
A. Yes.
Q. So you still had other things going on at that time; isn't that right?
A. Yes.
Q. And you had to rely on the team that Houlihan provided for you to work with you on this report; isn't that right?
A. Yeah.
Q. And in fact, your proffer repeatedly refers to the valuation as Houlihan's valuation, not your own

valuation, doesn't it?
A. Well, it's my valuation.
Q. Sir?
A. Yes, my report says Houlihan's, but it's -- I guess that's not correct, it's mine.
Q. All right. So when I asked you earlier if there were any mistakes in your proffer or your report, you didn't mention this, but one of them is that it talks about it being Houlihan's valuation, when it should say it's your valuation; is that right?
A. I said there weren't any mistakes that I was aware of.
Q. But you're aware of one now?
A. I am.
Q. All right. And although your report adopts

Mr. Fleming's cash flows, you had only limited access to Mr. Fleming prior to finalizing your report, didn't you?
A. That's not true either.
Q. Well, you had the one three-hour conference call on the 6th?
A. Yes.
Q. And then you had a meeting with him on the 11th after you had -- your word -- substantively completed your report; isn't that right?
A. You know, our report was not completed until

the 14th when it was submitted. I spent most of the day with Mr. Fleming on the 11th, a good portion on the 12th and at the end of that session he asked me if he should stay for another day and I said we were going to be getting together next week anyway.
Q. So you heard Mr. Fleming testify this morning, right?
A. He made a mistake again, I'm afraid.
Q. So with respect to the meeting on the 11th and the fact that he says there was nothing substantive discussed then, he was wrong about that, too?
A. I'm afraid so.
Q. Anything else you heard Mr. Fleming say today that was wrong?
A. No, not that I can recollect right now. I mean, that was a failing of his memory.
Q. Do you have any explanation as to why Mr. Fleming and your memories differ on this point?
A. I think Mr. Fleming had just spent a long time on the witness stand. He looked a little tired to me.
Q. At the meeting that you had with him on the 11th, you do agree with Mr. Fleming that there were other topics other than valuation discussed though, right?
A. I never discussed valuation with Mr. Fleming.
Q. But you discussed the financial projections

with him, didn't you?
A. Correct.
Q. And the harvest rate?
A. Correct.
Q. And the costs?
A. Yes.
Q. Now, when you got this draft report on February

29th, it was already based on Mr. Fleming's cash flows; isn't that right?
A. Yes.
Q. Now, you got involved on the 4th and you didn't start -- I'm sorry, you got involved on the 29th but you didn't really start work until the 4th and the report was due on the 14th. So wouldn't you agree with me that as a practical matter you had no time from the point when you were first got involved until the report was due on March 14th to do anything other than rely on Mr. Fleming's cash flows?
A. Well, I couldn't become a forester in ten days and it took Mr. Fleming 35 years or whatever to gain his level of expertise, and that's one of the difficult things about this particular project, is that it does require some very specialized expertise.
So there's no way that I could have done it, given three times, four times, five times the amount of

time because I couldn't become a forester. So I relied on Mr. Fleming's work. I certainly spent a lot of time with him understanding what it consisted of and convinced myself that it was reliable.
Q. Again, you didn't answer my question.
MR. BRILLIANT: Your Honor, I would like to ask Your Honor to strike that answer and direct the witness to answer my question.
THE COURT: I think the answer has been said but go ahead and ask your question.
Q. (By Mr. Brilliant) All right. I'll ask the question again. So you agree as a practical matter that from March 4th when you first got, you know, seriously involved in the project until March 14th when your report was due, if you wanted to do a DCF, you had nothing that you could have done other than rely on Mr. Fleming's cash flows; isn't that right?
A. No, that's not correct.
Q. On Thursday, March 6th, you had a call with Jim Fleming. Chris DiMauro was on that call; isn't that right?
A. For part of it, yes.
Q. And you used a document in that call which was a September 2005 presentation that contained a valuation that was prepared by Houlihan and Mr. Fleming; is that

right?
A. Well, the last part of it, I have no way of knowing, but I think it's incorrect. In other words, it became the basis of a valuation. I just don't know.
Q. No, I'm sorry. Either I misspoke or you misunderstood. But what I was trying to say was during the call, you used as roadmap for the discussion a September 2005 presentation?
A. Yes.
Q. That contained valuations, valuation in the presentation and that the document, the report was prepared by Houlihan with assistance from Mr. Fleming; isn't that right?
A. Well, I don't know really any more about the assistance from Mr. Fleming that was involved than Mr. Fleming did when you asked, or someone asked him that question this morning. Mr. Fleming's name is there as a source of information, but I have no personal knowledge of the document.
MR. BRILLIANT: Do we have the document?
MR. HALE: We used the document this morning so it should be up on the witness stand.
Q. (By Mr. Brilliant) Would you look to see if --
A. Yes, it's here.
Q. Okay. Do you have what's been marked as MMX 70

in front of you?
A. Well, it doesn't seem to be marked, but -- it says Scotia Pacific Company L.L.C. presentation to Bingham McCutchen, L.L.P. dated September '05.
Q. This H and the circle at the bottom, that's the Houlihan insignia?
A. Correct.
Q. And that's -- to the right of the insignia it says "Houlihan Lokey Howard and Zukin," is that correct?
A. Correct.
Q. And you've seen this report before, right?
A. Yes, I have.
Q. And this report is redacted; is that right?
A. Yes.
Q. And what's taken out of it is a valuation; is that right?
A. Well, I don't know what's taken out of it because it's redacted.

Q. Okay. Let's turn to page 29. The top of the page it says "executive summary, preliminary implied valuation summary."
A. Yes.
Q. Now, you said you've seen this report before, right?
A. Yes, but to hopefully cut this a little short,

the first half of this report is redacted, the second half starts with the title page saying business plan. When I printed this out I stapled the first half in one piece and the second half in another piece. I set the first half aside and I never looked at it again.
Q. And the second half you're saying you used as a roadmap for your conversation on the 6th?
A. Correct.
Q. But when I deposed you, you knew that this document had a valuation section that was redacted, didn't you?
A. Since it's redacted, I don't know what's taken out of it. Obviously this page indicates that it's a valuation summary. But I'm spending more time on it now than I did up to this point in total on the first half of this report.
Q. Mr. Daniel, I asked you a specific question. And I'd appreciate it if you'd give me a specific answer.
When I took your deposition, did you or did you not know that there was a valuation contained in this report which was redacted?
A. I think I was told that there was some valuation information that they would redact.
Q. So the answer is yes; is that right? Yes, you knew that there was information in this -- a valuation in

this report that was redacted, correct?
A. You know, I knew exactly what I just told you, that there was valuation information in here that would be redacted when it was sent to me.
Q. Thank you, sir. Now, you work at Houlihan, right?
A. Yes, I do.
Q. And this was prepared by Houlihan, right?
A. Yes.
Q. So you're all part of the same family?

A. I guess you can say that.
Q. And you find it to be odd that they would send you information, that your team would send you information to review and prepare your report and redact it?
A. Under these circumstances, not at all.
Q. Do you know why your colleagues gave you a redacted version?
A. You know, I can't tell you precisely what their thinking was. I mean, they didn't want me to see the work that was done before and I didn't want to see it. And when I got involved in this, you know, I -- as part of the process, I mean, I told Jeff, fine, I'll come in, I'll do the valuation, but I'm not doing anything else. Part of the rational for me being here was that Chris

DiMauro was too involved in the rest of it. I haven't been involved in anything except the valuation.
Q. Now, we know that your colleagues didn't redact this because they didn't want you to know what their views were on value because they gave you a report on February 29th that included, you know, numbers on valuation. So we know it couldn't have been that. So do you have any other explanation as to why they would have redacted the report?
MR. CLEMENT: Objection, Your Honor. That speech was not part of any questions and is inappropriate.
THE COURT: Well, is the document that you have just talked about in evidence?
MR. BRILLIANT: You know, it is not yet, Your Honor, but I guess I should move it into evidence.
THE COURT: Well, ask him about it and lay a foundation with a question.
MR. BRILLIANT: You know, Your Honor, I think from the testimony I'm going to get from this witness he's not going to be able to lay a foundation.
THE COURT: Well, I mean, I thought you just were making your question was that he had gotten a report earlier with valuation.
MR. BRILLIANT: That's right.

THE COURT: And now he got a report that had redacted valuation information.

MR. BRILLIANT: That's right. That's exactly right, Your Honor, and I want to know why that is.

THE COURT: He said that that was misleading. So ask him did he get a report first with valuations and then a report without it.

MR. BRILLIANT: Thank you, Your Honor. I'll ask my law school to send part of my tuition to you.

THE COURT: Okay.

Q. (By Mr. Brilliant) Mr. Daniel, you received a report on February 29th?

A. Correct.

Q. And that included a proposed valuation in it, didn't it?

A. Well, it included some analysis. There were no -- it was a draft report that had analyses in it.

Q. Mr. Daniel, you already testified that it had a number and that the number didn't change significantly. So did it have a number in it as to a proposed valuation?

A. Yes.

Q. And then you received this report also from Houlihan dated September 2005 which also had a valuation but the valuation was redacted; isn't that right?

A. Correct.

Q. Now, do you have any idea as to why it was redacted?

A. Other than what I told you, no.

Q. Is it possible that it was redacted because the number in it would not be helpful to your case?

A. Well, you know, it's possible that it was redacted because it has nothing whatever to do with my work here. It was two years older. The circumstances were entirely different. The company was operating far differently than it was, you know, than it is now that I'm involved. You know, I would have considered it to be irrelevant anyway. But at least if it's redacted, I don't have to say, you know, even what it is because I don't know. Certainly it is not relevant to me.

Q. Now, your team also gave you the DiMauro report, right?

A. Yes.

Q. And that had a valuation in it?

A. Yes, it did.

Q. And you got that before you finalized your

report?
A. Yes.
Q. And in fact, you got that pretty quickly after February 29th; isn't that right?

A. Yes.
Q. Were you ever asked to see an unredacted version of Exhibit MMX 70?
A. No.
Q. Didn't you want access to all the information that Houlihan had about the value of the company?
A. I didn't need access to this kind of information. Certainly the information that -- and the knowledge that the Houlihan Lokey professionals got by working with the company and the trustee over this extended period of time was useful and important to know about to the extent it was relevant. I don't think that I ever would have considered this particular analysis relevant.
Q. Well, you don't know whether you would consider it relevant because you never saw; isn't that right?
A. Well, that's correct.
Q. Now, would it have been helpful to you to know what comparable companies Houlihan selected previously?
A. Well, you know, I know what was selected in Mr. DiMauro's September '07 declaration and I know what we're using now, I know what's available. I know that what we're using now is different from what Mr. DiMauro used. After learning what Mr. DiMauro used, I think I probably wouldn't care what was used before because I decided to go at it in a different way.

Q. Now, Houlihan is a big firm, you testified, and has lots of resources; isn't that right?
A. Yes.
Q. Now, you want the Court to make the right decision and don't you want the Court to have the benefit of all of Houlihan's valuation work on this matter?
A. Well, you're getting the benefit of all of my valuation work here because this is my work. I'm the expert. And you know, you're seeing the sum total of it. Some of that obviously I learned from my colleagues in connection with their prior experience. But what they did before is not my business.

Q. Now, I asked you about your team earlier and whether or not you knew whether any of them had worked on the DiMauro proffer, the September DiMauro proffer, and you said you did not. Do you know whether the people in your team who worked with you on this valuation had any role in the September 2005 report and the valuation contained in it?
A. I think that, you know, certain of them probably did, but I don't know who was specifically other than the fact that several of the team members have been involved in this for quite some time.
Q. Let's turn to your report, sir, I guess the one

that Mr. Clement refers to so fondly as the big report. Do you have that in front of you?
A. I will in a second. Okay.
Q. Will you turn to page 17. Now, this is a summary of valuations; isn't that correct?
A. Correct.
Q. And the income generating timberlands line, there's three headings below that, market multiple methodology, discounted cash flow methodology, and preliminary bids received; is that right?
A. Correct.
Q. And those are the three methodologies you used for doing this valuation?
A. Well, I don't think we call it preliminary bids received methodology and it certainly doesn't rise to the level of importance of a discounted cash flow. As I mentioned earlier, that's obviously the first thing that we approached and the only way that you can rationally start a process like this. It's there. We don't call it a methodology.
Q. Is it a valuation analysis?
A. The sum total of this report comes up with a valuation conclusion, and some totals valuation analysis.
Q. Okay. Can you turn to -- can you turn to page -- we'll do Mr. Neier's first. Can you turn to page

44 of your report, the big report. Actually, page 43 and page 44.
A. Okay.
Q. What's the heading here?
A. Well, this is a different methodology, but it

says methodology, it doesn't relate to what you just read me on the page 17.
Q. I guess I'll ask you again. So this is a preliminary bids received methodology. That's what it says? And this is your report?
A. And this is a different application than you just referred to on --
THE COURT: You've really got to not answer the questions that you want to answer. You need to answer what he's asking. And they'll tell you whether or not you need to answer the next question.
A. Yes, that's what it says.
Q. All right. And if you go to page 42, it says valuation. This is the index, right?
A. Yes.
Q. Valuation, approaches to valuation, summary of values, market multiple methodology?
A. Yes.
Q. Discounted cash flow methodology, preliminary bids received methodology; is that right?

A. That's what it says.
Q. Okay. And you know, I count three methodologies, the market multiple methodology, the discounted cash flow methodology, the preliminary bids received methodology. Do you agree with my math, it's three methodologies there?
A. Yes, but you didn't ask me what they were methodologies for.
Q. Well, I think the Judge is trying to tell you it's not --
A. That's what it says, yes.
Q. For someone who has testified 30 times, Mr. Daniel, you're being very difficult. I'll ask the questions, you answer my questions and your counsel will get an opportunity --
A. Yes.
Q. -- to ask you on redirect. So there's three methodologies. Now, if we go back to page 17 under income generating timberlands, the same three methodologies are listed there, isn't that right, market multiple methodology, the discounted cash flow methodology and the preliminary bids received methodology?
A. No, it doesn't say methodology there.

Q. It doesn't say methodology but it is a

methodology, isn't it?
A. It doesn't refer to that subsequent section, it's not a methodology.
Q. Turn to page --
THE COURT: We don't have a jury and so nobody is going to get to see, but if what you're trying to imply is that they averaged those three together as methodologies to come up with the bottom line, that's not what they did. They averaged the top two to come up with the bottom line.
MR. BRILLIANT: I don't believe that's right, Your Honor.
THE COURT: Okay. I may be wrong, but if you go from 530 to -- maybe I'm wrong. It's halfway between 530 and 545, isn't it?
THE WITNESS: I think you are wrong, Your Honor.
THE COURT: I am wrong?
THE WITNESS: It is averaged in.
Q. (By Mr. Brilliant) So Mr. Daniel, all three of these -- can I call them methods? Will you agree they're all three methods?
A. Well, what I objected to before was that you're linking two separate parts of the report that have nothing to do with one another. Obviously this is

averaged in as one of the approaches where we come up with a total for the income generating timberlands. You'll notice there as well that the DCF approach comes up with the highest conclusion. So by throwing in the preliminary bids received, we're tempering it downwards. And therefore, influencing the overall answer to be something lower than it would have been otherwise. We believe that it was important to consider them. And that's why we threw them in because we thought that they were information that should be included in our analysis. As I stated in my deposition one normally would not do that. But we thought that these were important.
Q. Now, but you acknowledge you averaged them in one-third, one-third, one-third?
A. Absolutely.
Q. And you say that the preliminary bids lowered

the number, but that's not right on the low end, is it?
A. That's correct.
Q. It actually raised the number a little bit?
A. A trifle, yes.
Q. And on the high end it lowered it a little bit?
A. Well, it lowered it, yes, it lowered it, and it's also lower at both ends than the DCF is. You can't just rely on one approach. I think that's been discussed here, you know, several times today already.

Q. Let me ask the questions, please. Now, with respect to the preliminary bids received, you've reviewed those three letters?
A. Yes.
Q. And you reviewed those letters?
A. Yes, I did.
Q. And all three of those letters were bids for all of the assets of Scopac; is that right?
A. Yes.
Q. And all of the assets of Scopac included the MMCAs?
A. Yes.
Q. The cell towers?
A. Yes.
Q. The gravel?
A. Correct.
Q. Any other assets of Scopac?
A. Yes.
Q. And in coming to a total valuation, you then added the gravel, cell towers and the MMCAs again, so you double counted with respect to the preliminary bids received approached; isn't that right?
A. Yes, we did.
Q. Now, in addition to using the preliminary bids as a methodology or an approach, if you prefer, that was

weighted one-third, you also used the preliminary bids to help determine the discount rate with the DCF methodology; isn't that right?
A. Correct.
Q. And you also used it to determine the cap rate for the DCF methodology; isn't that right?
A. The cap rate is derived from the discount rate so indirectly they were used.

Q. But you used it?
A. Yes, we did.
Q. And as of the time you wrote the report, the letters that you read were non-binding expressions of interest by the parties, correct?
A. Right.
Q. And as you've already testified, you don't believe that it's appropriate to average in valuations based on preliminary bids, but instead it's better to only use transactions that have closed; isn't that right?
A. Well, that's the standard wisdom.
Q. Now, do you think it was not coincidental that the bids were all in the same ballpark amount as the other methodologies were coming out in your calculation; is that right?
A. Correct.
Q. But you have never spoken with any of the

255

other -- of the three parties who had expressed interest; isn't that right?
A. No, I haven't.
Q. Hadn't talked to them by the time you finalized your report?
A. I still haven't talked with them.
Q. And still haven't talked with them today. Okay. Thank you. Now, has Mr. DiMauro, your other colleague in the restructure group, ever spoken to them?
A. I'm sure that they have.
Q. And these are the same colleagues who are working hard to maximize value for the indenture trustee and the bondholders; isn't that right?
A. Right.
Q. And they are also the people who Houlihan gave you to help you draft your report; isn't that right?
A. Yes.
Q. Now, you thought that all your colleagues would give you all the information you would need to give an opinion; isn't that right?
A. Well, I didn't expect them to hand it to me on a silver platter but yes, I expected them to be responsive, and to my knowledge, they were.
Q. And you were relying on them to do that; isn't that right?

A. Correct.
Q. And you actually had a conversation with them and told them that given the short time frame, you needed them to tell you everything; isn't that right?
A. I don't recall the specific conversation but I may have referenced it.
Q. Now, you didn't ask them whether any of the bidders used in the preliminary bids analysis had lowered their bids prior to when you finalized your report, did you?
A. No, I didn't.
Q. Now, in Bidder B's expression of interest, the dollar amount was bracketed in the letter; isn't that right?
A. I believe it was.
Q. And did you take it from the fact that it was bracketed, that it was just an estimate?
A. You know, I didn't take anything from it.
Q. But you thought that it was sufficiently firm, that you should use it in your report?
A. I thought it made sense and that it was important information that we should somehow include in our analysis.
Q. Now, at the time you finalized your report, you didn't know that Bidder B had informed your colleagues

that it wasn't prepared to go forward at that number that was bracketed and instead, was going to lower its bid, did you?
A. No.
Q. Now, given the conversation you had with your colleagues and that you were relying on them to give you all the information, you would have expected to be informed of anything that was relevant; isn't that right?
A. Yes.
Q. So if your colleagues knew about that, you would expect that they would have let you know about it; isn't that right?
A. Well, and I would expect that they would let me know about it after we talked about it in the deposition, but I still -- I haven't heard anything one way or another.
Q. Have you asked your colleagues?
A. Yes.
Q. And what have they said?

A. I haven't heard them. They didn't say anything.
MR. BRILLIANT: Your Honor, Bidder B is the subject of a confidentiality and protective order in the case. They don't want their name to be used or the amount of their initial bid to be used. Now, it's in the

document. All the parties who have signed the protective order know who it is. If Your Honor would like, I'm sure Your Honor could guess, but I could write it down on a piece of paper.
THE COURT: Well, just write it on a piece of paper and hand it to me. But I think we have parties on the phone who are not subject to the confidentiality agreement.
MR. BRILLIANT: May I approach, Your Honor?
THE COURT: You may. Just hand it to Letty. Is this the amount and the name that was written down?
MR. BRILLIANT: I just wrote down the name, Your Honor. The amount is listed in the report on page 43 next to the name Bidder B.
THE COURT: Okay.
MR. BRILLIANT: Now, Your Honor, we have an e-mail that we got in the discovery that we got from them that we have redacted to take out names of the people, the e-mail addresses and other things, but all the substance is there.
THE COURT: Okay.
MR. HALE: This is part of Exhibit 20. It's part of MMX 20. It's in back. May I approach the

witness, Your Honor?
THE COURT: All right.
MR. BRILLIANT: Your Honor, this is marked as Exhibit 3 to Bidder B's deposition.
MR. HALE: It's part of Exhibit 20.
MR. BRILLIANT: Which is attached to Exhibit 20 of the deposition transcript.
Q. (By Mr. Brilliant) Mr. Daniel, have you ever seen this before?
THE COURT: Do you have a question?
MR. CLEMENT: Your Honor, I need to pause

here for a moment. There's been numerous people on our side who have been involved in this particular issue.
THE COURT: Okay. This is not a test.
MR. BRILLIANT: Your Honor, we can put it on the Elmo in the redacted form. I don't know that it's necessary, given that all the parties have it. But if Your Honor wants to see on it the screen.
THE COURT: I don't care. Now, Mr. Clement.
MR. CLEMENT: My understanding is this is one of the exhibits to a deposition that they have put on their exhibit list. The deposition doesn't belong in evidence. This potential document -- this particular document may or may not. So we have no objection to them

proceeding with this particular document.
THE COURT: All right. Thank you.
MR. CLEMENT: Subject to any objection we might have if they try to admit it.
THE COURT: That's fine. He's trying to identify it now. Go ahead. Do you remember the question? Have you ever seen that before?
Q. (By Mr. Brilliant) Yes. Have you ever seen this before, Mr. Daniel?
A. No, I haven't.
Q. Now, the from line has been redacted, but the to line says Eric?
MR. KRUMHOLZ: Just to clarify -- I'm sorry, I just want the record to be clear. The deposition that is Exhibit 20 is not in evidence, hasn't been offered. But just this document, this document is confidential, we have no objection to it. Is that clear on the record?
THE COURT: You have no objection to the document? I thought you said he did. He was just saying he has no objection to him using it right now to identify it to then make it admissible. I'm not sure where we are on that, but he just said he's never seen it.
MR. BRILLIANT: Judge, I'm not seeking -- he's an expert witness. I'm just seeking to see whether

or not this would change some of his opinions, that's all.
THE COURT: Okay. Go ahead. Ask him the

hypothetical question then based on this.
MR. BRILLIANT: I wanted to ask a few more things first, Your Honor, but I do appreciate all the help.
Q. (By Mr. Brilliant) Mr. Daniel, the to line says Eric Winthrop. Who is that?
A. Mr. Winthrop is sitting in the back of the courtroom right now.
MR. CLEMENT: Your Honor -- Your Honor, I will object because he's -- the first thing he's done is ask the witness have you ever seen this, the answer no. So I'm not sure what we're doing at this point.
THE COURT: Well, I mean, if he's an expert witness, that's a question to can ask him. There may be pertinent information he hasn't seen. So the most important thing is have you seen it? No. So if you had seen this, would it change your opinion? It happens. Not very often, but that happens. Go ahead. This might be the smoking gun. Go ahead.
Q. (By Mr. Brilliant) The next document, Your Honor, the -- Eric Winthrop, he's in the courtroom today?
A. Yes.

Q. He's an employee of Houlihan?
THE COURT: Let me just say, we have plenty of lawyers in the courtroom and people on the phone, and some of them are with media outlets. Any comment that I make like this is not a comment on the quality of the lawyering being done by all of the tables because I don't get this quality of lawyers all the time, and they're all doing an excellent job of representing their clients, asking the questions, making objections, doing all those things that lawyers do.
So, you know, it's easy for me to sit back and every now and then make a joke about it because it sort of loosens the tension, and that's why I do it. And probably I do it too much. But regardless of the fact, I didn't want anyone thinking that was a comment on any of you-all's lawyering ability.
Q. (By Mr. Brilliant) Mr. Daniel, this person is an employee of Houlihan and he's a member of your evaluation team; is that right?
A. Yes.
Q. And he's a member of the indenture trustee's restructuring team?

A. Yes.
Q. He's a director of the financial restructuring group?

A. Correct.
Q. And you don't have to take it on representation from me that the redacted -- the redacted parts reflect that this comes from Bidder B. Have you read the paragraph with the number two in it?
A. Yes.
Q. And the date on this is March 15th, 2008; is that right?
A. Right.
Q. That's the day after your report was presented; is that right?
A. Correct.
Q. And in paragraph 2 it says "you note that we have left the purchase price blank"?
A. Yes.
Q. "It does not imply that we anticipate any upward revision which would occur only if we find unexpected information that enables us to see additional value. Our usual approach, in any event, is to wait until the final strokes to put our price in print. In this case, we are also deferring to your wish that we not send anything now that reflects a lower number than our initial pre-diligence expression of interest." Did I read that correct?
A. Yes.

Q. Now, given that you were putting together a report for the Court and relying upon Bidder B's value in connection with your valuation, wouldn't you have wanted Mr. Winthrop to have told you about the conversations he had had with Bidder B?
A. Well, while he didn't tell me in quite those words, he did tell me, or someone told me. Because this is entirely consistent with the term sheet that I did review that had a blank where the number was supposed to be. And I asked why, and this is the answer that I got.
Q. And when did you see that?
A. Well, I think the term sheet was dated the 15th as well or somewhere pretty close to that.
Q. And you're saying you saw that on March 15th?

A. You know, I'm not sure when I saw it, but it was after March 15th at some point. I don't remember the date.
Q. Did you see it prior to when I deposed you?
A. Gosh, I just don't remember.
Q. Do you remember that Bidder B was being deposed the same time you were. Do you remember that?
A. Right.
Q. And do you remember you wanted to break for lunch and I had asked that you not talk to anybody because I didn't want you learning information about what

had come out in Bidder B's deposition --
A. Right.
Q. -- is that right?
A. Right.
Q. And then I asked you some questions about this?
A. Right.
Q. And at that time, you didn't tell me that you had received a term sheet that had a blank number after the purchase price, did you?
A. Well, I did. I'm not sure that I remember exactly when. It actually could have been before the depo. I certainly didn't see this letter, but I saw the term sheet, I reviewed it, I noted the blank and I asked about it.
Q. Now, if the Bidder B was deferring to Mr. Winthrop's wish that we not send anything that reflects a lower number in our initial pre-diligence expression of interest, is that something that you would have wanted to know in connection with your report where you were relying on a number that they no longer were standing behind?
A. Well, I did know it. I mean, we obviously submitted the report on the 14th. It doesn't change my opinion. These kinds of things happen all the time in the negotiation. They weren't alone either. I mean,

there's lots of serious bidders here. Mr. Beal has got a $603 million check out there.
Q. We'll get there. First of all, it's not responsive to any questions, but we'll get to that.
So let me ask you again. Are you telling me then that Mr. Winthrop told you prior to when you did

your report that Bidder B was going to lower their price?
A. No, he didn't.
Q. He did not?
A. Well, he didn't even receive this letter until afterwards. This is dated the 15th.
Q. And is the letter a follow-up -- do you know whether the letter is a follow-up to a phone conversation?
A. I have no idea.
MR. BRILLIANT: Do you have the deposition? Your Honor, I'm going to pass up to you an excerpt from Exhibit 20, which is the deposition transcript of Bidder B's representative which needs to be held under seal. It's been redacted as previously been discussed not to disclose Bidder B's identity.
MR. CLEMENT: Your Honor, we object. This is the deposition transcript of the bidder. Mr. Daniel wasn't there in the deposition. The testimony of this bidder --

THE COURT: Let me see the document.
MR. CLEMENT: It ought not to be admitted. It's not proper.
THE COURT: It's not admitted. Are you intending to offer this deposition?
MR. BRILLIANT: Not for Mr. Daniel, Your Honor.
THE COURT: I didn't ask. You're not intending to offer the deposition at all?
MR. BRILLIANT: Yes. We've already designated some portions of the deposition as evidence, yes. Not the whole thing, but some portion.
THE COURT: Okay. And how were you going to use a deposition as testimony in the case?
MR. NEIER: He's an unavailable witness.
MR. BRILLIANT: It's a witness outside of the radius of the court.
THE COURT: Under the appropriate Federal Rules of Evidence on how you designate depositions of witnesses who are outside the -- you know, these are -- these highly technical evidentiary issues that never come in bankruptcy court, but there are rules out there. Did you follow them or not?
MR. CLEMENT: Your Honor, I'm going to --
MR. HALE: Your Honor, we have no

agreement as to how to designate deposition testimony in the case.

MR. CLEMENT: I'm going to defer to Mr. Krumholz here who has been involved in these evidentiary.

MR. KRUMHOLZ: We're not even close. Even if they had somehow called the witnesses quote unavailable under Rule 803 in these circumstances --

MR. NEIER: Yes, it is.

MR. KRUMHOLZ: Have you laid that foundation? And where is it? Well, and this is improper impeachment of someone else's testimony. And third of all, while this one piece of paper that isn't certified in any way to be a transcript. It's literally a typewritten piece of paper written by Marathon lawyers that has questions and answers on it. That's what we're talking about right now. It's not a certified copy of anything.

MR. HALE: They have the transcript.

MR. KRUMHOLZ: It's not a transcript at all.

THE COURT: I suspect you have a copy of the deposition, don't you? So I'm going to -- I'm going to -- I'm not sure whether we can clear all of this up, whether this deposition comes in or whether it doesn't

come in, but I'll let you ask the questions right now because you've got him on the stand. And, in essence, you're proffering these questions because it may well be that if this deposition doesn't come in some other way, I don't know how you can -- you can use it to --

MR. BRILLIANT: Right now, Your Honor, he's an expert witness. I'm using it to impeach him, no different than Mr. Clement.

MR. KRUMHOLZ: You can't impeach him with someone else's testimony.

MR. NEIER: You can impeach an expert witness with anything.

MR. KRUMHOLZ: That's not true.

THE COURT: I agree that he can ask hypothetical questions of this witness.

MR. KRUMHOLZ: He can do that. That's not impeachment.

THE COURT: Whether or not the question becomes realistic or remains hypothetical depends on whether you can get some evidence about what the gentleman Bidder B said in his deposition. So ask your questions now --

MR. BRILLIANT: Thank you.

THE COURT: -- in a way that you can ask them, and we'll deal with this when it comes up.

MR. BRILLIANT: Thank you.

MR. CLEMENT: Your Honor, I'd like to let Counsel move on. I will simply point out the witness has testified already that he has never talked to any of these bidders; and hence, this seems to be an inappropriate impeachment, but we'll see where it goes.

THE COURT: We're not impeaching his memory of what the witness said because the witness didn't say anything to it. We're asking him if he -- what would this change. I assume you're asking would this change his opinion, so go on.

MR. BRILLIANT: That's right.

Q. (By Mr. Brilliant) Before I go to the deposition transcript, Mr. Daniel, the first sentence of the letter after "hey, Eric," it says, "We will just have received the letter of intent that Toby asked of Bidder B in which we discussed yesterday." Did I read that correctly?

A. Yes.

Q. And yesterday would have been the 14th, the day that your expert report was delivered; is that correct?

A. Correct.

Q. Now, I ask you to turn to the deposition transcript, Exhibit 20, at page 109.

A. You mean my deposition transcript?

Q. No, no, the deposition -- did they give you a copy of it?

A. I don't, no.

MR. HALE: Just read it.

Q. (By Mr. Brilliant) I'm going to read it from a deposition transcript. It's the testimony of Bidder B. Question: "Did you have an understanding that Exhibit 3 paragraph number two," which is the exhibit you just looked at, "Bidder B's representatives e-mailed to Eric

Winthrop that you were basically communicating in this site letter to Houlihan that your price was going down?"
Answer: "Yes."
Question: "And that was because you had more time to look at due diligence?"
Answer: "We had access to the sale information which we had not had at our first price. Not just more access. I mean, it was the first access we had in the seller's information."
And I'm going to skip down to the next question and answer, which is in Exhibit 20 page 66 line 14 through page 67 line 2. Question: "Does Exhibit 4, which is the revised letter from Bidder B, contain a proposed purchase price?"
Answer: "No."
Question: "Why does it not contain a proposed

purchase price?"
Answer: "Because in our discussions with them, it became clear that we weren't going to be able to fix the purchase price until we agreed on the other terms, and it was their preference that we left that open."
Question: "You indicated it was their preference to leave that open?"
"Yes."
"Who's preference was that?"
"Houlihan Lokey and Fulbright & Jaworski."
Now, does the fact that Houlihan was telling the bidders not to fix lower prices and give them to Houlihan change your opinion as to the reliability of the Bidder B expression of interest and whether or not it was appropriate for you to rely on it?
A. I think I had to know where they were thinking, you know, after they had thought about it a little bit more. I mean, if they go down much further from where they are, they're out. There's still two people left. And I know there have been other people knocking on the doors. And if they're not willing to pay up, that just means they're out.
Q. So the fact that you relied on something that may not have been what the party was prepared to do doesn't trouble you or make you reconsider whether or not

it was appropriate to use and whether or not you should

review your opinion; is that correct?
A. Well, one of them dropped out and one of them came hard and fast, so I guess we're even.
Q. Let's talk about that. Are you familiar with Bidder A?
A. Yes.
Q. And I believe Bidder A's counsel is in the courtroom and has no problem with us using their name. Bidder A is the Nature Conservancy; is that right?
A. Yes.
Q. And are you aware of whether or not Bidder A has financing for its transaction?
A. I doubt that they have it at the moment.
Q. So you relied upon an expression of interest from a party that doesn't have financing for its transaction; is that right?
A. That's correct.
Q. Now, would it surprise you if I told you that your colleagues at Houlihan had indicated to Bidder A as to what they should put in guidance as to what should be put in the letter in terms of value, would that surprise you?
A. Well, the context is important as well. The way you couch it, it would probably surprise me.

Q. Now, at the time of your deposition -- let me strike that. You didn't do any due diligence at the time of your deposition whether or not Nature Conservancy could get financing to close their bid, did you?
A. That's incorrect.
Q. Prior to the time when you issued your report on March 14, did you do any due diligence?
A. Prior to March 14th, I didn't.
Q. And after March 14th, after you gave your report but before I deposed you, you did some Internet searches; isn't that right?
A. Yes.
Q. And that's -- that was your process, doing some Internet searches, for qualifying the bidder; is that right?
A. Well, it became clear that they had done this kind of transaction before successfully at least twice on a large scale, and they found financing.
MR. BRILLIANT: Your Honor, I move to strike and ask that you direct the witness to answer the

questions.

THE COURT: Okay. So again, I know it's so tempting to think that we know what the response will be and why you want to defend, but you really need to answer what he asks. Go ahead.

A. I'm sorry, I sort of lost the train here.
Q. Now, what you did was in order to qualify the bidders is you did an Internet search; is that right?
A. Yes, that's correct.
Q. And at the time you finalized your report, were you aware that Nature Conservancy had no commitment from any party to finance their bid?
A. It was my expectation they didn't have a commitment because that's not the way they've done it before.
Q. And were you aware that the Nature Conservancy had talked to Houlihan about bid prices and that Houlihan had told the Nature Conservancy what a useful bid price to them, Houlihan, would be?
A. I'm not aware of any of the conversations that my colleagues had with Nature Conservancy.
Q. Are you aware that the Nature Conservancy would need to finance their bid through federal and state financing?
A. They have creative ways of financing. I don't know how they were going to finance it. As I mentioned, I would expect it wasn't financed. That was my expectation.
Q. So the answer is no, you weren't aware that they needed state and federal money?

A. I'm not sure that they do need state and federal money.
Q. So you're not aware? The answer is no, you're not aware that they would need state and federal money?
A. Correct.
Q. Are you aware that Houlihan asked the Nature Conservancy to sign a letter of intent in March and that George Ann Dell from the Nature Conservancy said quote, "no way, no how"?
A. As I mentioned, I'm not privy to any of the conversations my colleagues had with the bidders.
Q. Now, if you knew all these things -- you know,

assume for me for the purpose that they're true. We'll worry with the Judge later whether or not that deposition transcript is admissible.
A. Sure.
Q. But assume they're all true for a moment. Would this knowledge about the fact that Nature's Conservancy bid didn't have financing, that they weren't prepared to sign a letter of intent and that the number that they put in, which is used in your report, was guided for them by Houlihan Lokey. Would that change whether it was appropriate to use and whether or not the methodology of using expressions of interest is appropriate?

A. No.
Q. And you don't think that that undermines that methodology in your report?
A. That just sounds like the normal course of things to me.
Q. And is it -- I believe you testified earlier it's not your general policy to rely on expressions of interest as distinct from closed transactions as methodologies in bids, but you did here. And the fact that maybe these bids aren't all that real doesn't change as to whether or not you would rethink having used that methodology?
A. They are real. We have $603 million of real cash on the table.
Q. Is Bidder B's?
A. That's about as real as it gets.
Q. Is Bidder B's real at the level --
A. Maybe it will become more real now that they know there's $600 million out there. I don't know. This is a negotiating process. That's the way it works.
Q. But you're relying on something that you don't know whether it's real?
A. That's right. It provides information that I thought was useful. I did not want to throw it away. And I'm glad as I sit here that I didn't.

Q. And Bidder C in your report, the $603 million bid, the highest bid, that's from Beal; isn't that right?
A. Correct.
Q. Affiliate of Beal. And Beal's a noteholder in

the case?
A. Correct.
Q. One of the beneficiaries of the indenture trustee, your client's duties?
A. One would hope.
Q. And are they the largest bond holder?
A. That's my understanding.
Q. At the time you wrote your report, all Beal had provided was a one-page non-binding expression of interest; isn't that right?
A. Yes.
Q. And as of the time you gave your opinion and wrote your report, you hadn't spoken with anybody at Beal; is that right?
A. That's correct.
Q. And as you sit here today, you still haven't spoken to anybody at Beal; is that right?
A. Correct.
Q. Now, you testified earlier that Beal has now made a binding bid; is that right?
A. Correct.

Q. Now, how do you know that?
A. Because I've seen the -- I've seen the bid letter.
Q. Now, are you -- are you a lawyer?
A. No, I'm not.
Q. And have you sought any legal advice as to whether or not that letter is binding? I'm not asking you to tell me --
A. No.
Q. -- any advice, just whether you sought any?
A. No, I haven't.
Q. And are you aware that Mr. Cherner from Beal was deposed yesterday?
MR. BRILLIANT: All the days have blended together, Your Honor.
Q. (By Mr. Brilliant) Yesterday?
A. Yes, I am.
Q. And are you aware that he has testified that all that letter is is an expression of interest?
A. I don't know what he testified to.
Q. Are you also aware that one of the conditions to that bid is that the Headwaters litigation be settled on terms that are acceptable to Beal? Are you aware of

that?
A. Well, I read the letter, and I think there's a

280

reference in there to the Headwaters litigation. But beyond that, I mean, I can't give you much information. The way I read it -- and I don't have it here in front of me, it didn't look like an out to me.
Q. So you think that their having the unilateral right to approve a settlement would not be an out?
A. I don't have the letter in front of me.
Q. Are you aware at Mr. Cherner's deposition that he testified he doesn't know what type of settlement they would require in order to waive that condition?
A. If I were in his position, I would have said exactly the same thing. I don't know what he said in his deposition. I haven't seen the transcript.
Q. So it's possible that the litigation has to be settled for hundreds of millions of dollars in order for them to go forward?
A. I actually don't know anything about the litigation, so -- I know what I've heard in testimony here, but I'm certainly not an expert in it.
Q. Now, Mr. Beal hasn't signed an asset purchase agreement, has he?
A. No, he hasn't.
Q. And are you aware of whether the deposit that the Beal bidder would put down would be liquidated damages and be the only claim that he would have against

281

them if they chose not to close?
A. Well, I don't think the process has gotten that far yet.
Q. So you think that's still an open issue?
A. Well, a plan would have to be approved in order for the letter to take effect way. It would have to be approved by the bankruptcy court. The terms of it would have to be approved and it would be subject to change at the judge's decision. So I mean, it is what it is at this point. But it can't really proceed beyond this until it becomes part of the process. That's my understanding.
Q. But it's sufficiently binding for you, for you to rely on it in terms of giving an opinion as to value of Scopac's assets?

A. It's as binding as it can be under the circumstances.
Q. Well, you say that, but they could have signed an asset purchase agreement and disclosed what the specific outs would be; isn't that right?
A. They couldn't have done that until -- let's put it this way. That would have been highly premature. And I certainly wouldn't have done that if I had to -- why would I go to all the trouble in signing a purchase agreement when, for all I know, the judge might change

half the term sheet.
Q. All right. Let's change the topic for a little bit. How about if we talk about the discounted cash flow. Now, one of your three methodologies was a discounted cash flow analysis; is that right?
A. Correct.
Q. And the -- that application required you to come up with a discount rate, and then you applied it to cash flows that were projected by Mr. Fleming; is that right?
A. Correct.
Q. So if Mr. Fleming's cash flow projections are inaccurate, the discounted cash flow methodology might not be something that would have much validity; is that correct?
A. Well, if the cash flows are incorrect, the projection is incorrect.
Q. Now, you testified earlier when I took your deposition you didn't know the company's harvest rate trend; is that right?
A. I think that's what I said. I don't recall. We can go back to the depo, if you like. Something to that effect.
Q. Why don't we turn to page 282, paragraph 12 of your deposition.

A. Okay.
Q. Question: "Now what was the harvest rate -- what was the trend of the harvest rate from 2002 to 2007?"
Answer: "I can't tell you."
Question: "Did it go down every year?"
Answer: "I don't know what it is."

Question: "No, I'm saying from 2002 to 2007, did the harvest rates go down every year?"
Answer: "I just told you that I don't know what it is, the harvest rate."
"You don't know the answer to the question or you don't know what the harvest rate is?"
"I don't know what the rates is."
"For any of those years?"
Answer: "No."
Question: "Now, if I told you that the harvest rate was declining from 2002 to 2007, might that not change your mind as to whether or not the 2007 number was an anomaly?"
Answer: "No."
Did I accurately read the questions and answers that came out in your deposition?
A. Yes.
Q. Does it refresh your recollection as to whether

or not at the time I took your deposition as to whether or not you even knew the trend for the harvest rate over the period from 2002 to 2007?
A. Well, I think it's pretty clear that I didn't know what it was. I said no.
Q. Now, you said earlier that you know a lot more now than you did at the time of your deposition. Do you know what the harvest rates are -- were from 2002 to 2007?
A. Well, I know that the average of the six years, 2000 to 2005 is about 160 million, just shy of -- board feet dropped to 100 million in 2006 and down to 73 million in 2007.
Q. Okay. And is the trend a downward trend from 2002 to 2007?
A. Correct, and downward from prior years as well. It was 100, I think, in '99 and something like 240 or something like that in the prior year.
Q. So it has come down dramatically over the last number of years?
A. Indeed.
Q. Now, please turn to page 24 of your report. This is the EBITDA run-rate for Scopac from --
A. I'm sorry. What page are we on?
Q. 24 in your big report. Are you with me,

Mr. Daniel?
A. Yes, although I have to say I'm feigning a bit, but yes, I am with you.
Q. And this is your run-rate EBITDA analysis, or at least part of it; is that right?
A. Yes.
Q. Now, what you did is -- just strike that. The EBITDA from 2002 to 2007, with the one exception -- well, EBITDA in 2007 last year is $23.1 million; is that right?
A. Correct.
Q. And it was $42 million in 2006?
A. Correct.
Q. And it was $51.8 million in 2005; is that right?
A. Yes.
Q. So it has fallen in the last two years?
A. Yes.
Q. And the harvest rate in 2007, I believe you testified a little while ago was 74 million or so?
A. 73, I think.
Q. 73. Okay. And in 2006, do you know what it was then?
A. It was 100. Well, it was 99, something like that.
Q. And in 2005?

A. In 2005 it was on that sort of 160 million plateau. It was bouncing between about 140 and -- you know, something in the 60's. I don't know precisely. I think it was on a plateau that was substantially higher than either 2006 or 1999 when it dropped to 100.
Q. Okay. Now, if I represented to you that in 2005 the harvest rate was 146 million board feet, would you take my word for it?
A. That sounds right to me, or close anyway.
Q. Now, so from 2005 to 2006, it dropped from 146 to 99. And from 99 in 2006 to 73 in 2007; is that right?
A. Yes.
Q. And then if you look at your chart here on page 24 of your big report, EBITDA went down from 51 to 42 in 2005 to 2006. And then from 2006 to 2007 it went from 42 to 23; is that right?
A. Yes.
Q. Now, Mr. Fleming is projecting in your cash

flows what EBITDA for 2008?
A. Well, 2008 is -- 2008 is 39.6 on this page.
Q. And that's for a partial year? What page are you on, sir?
A. I'm at 24.
Q. So you're still at 24?
A. Yes. Well, because of his valuation date, I

don't think it is a partial year, but --
Q. So he's projecting $39 million in 2008?
A. Something to that effect.
Q. Okay. And then what kind of rate increase would that be from the 23 million in 2007?
A. Well, what do you mean?
Q. Well, you've got 23 and then it's going to 39.6. That's a large increase, isn't it?
A. Yes, it is.
Q. Would you say it's 80 percent?
A. I don't think so, but I don't have a calculator.
Q. Well, if I represented to you it's 78 percent, does that sound right to you?
A. I'll take your word for it.
Q. Do you think that a 78 percent increase in EBITDA is a large increase?
A. Yes, but there are reasons for it.
Q. Well, your counsel will get a chance to bring that out later, but I appreciate your honest in the answer yes.
Now, where in your report -- I think it's page 36 where the DC -- the discounted cash flow analysis is done; is that right?
A. I'm looking. Yes, for the income generating

timberlands, yes.
Q. Now, this is done at a different date than the other chart, isn't it? It's a different year end?
A. Yes.
Q. So the numbers are a little bit skewed from the page 24 we just looked at; isn't that right?
A. Yes.
Q. And with respect to 2008, that's only a partial year, correct?
A. Here it is, that's correct.

Q. In 2009 it's a full year?
A. Correct.
Q. And EBITDA, leaving out the partial year, but in 2009 is 41, and then it increases marginally for a number of years. And then there's a big jump from 2016 to 2017; is that right?
A. Correct.
Q. And what is 2017? That's the tenth year?
A. Yes.
Q. Okay. And that also is the terminal year --
A. Correct.
Q. -- in your analysis, isn't it?
A. Yes.
Q. And the terminal valuation, that's the EBITDA that is capitalized and then brought back to the present

value; isn't that right?
A. It's the EBITDA that's capitalized in perpetuity, yes.
Q. So if you have a big jump in the terminal year, that will have a large effect on the valuation, won't it, because that year is going to be capitalized into perpetuity; isn't that right?
A. Well, all of the things being equal, of course.
Q. And the -- do you know what the percentage jump is from 52 million to 68 million from 2016 to 2017?
A. No.
Q. Now, but that's a large increase, isn't it, of $16 million on 52 million?
A. It's a decent increase, yes.
Q. Well, I'm not a math guy.
A. It's 16 million versus whatever the prior year was.
Q. If you double 16, you get to about 30 percent. It's about a 30 percent increase; is that right?
A. Not bad.
Q. That's a big increase; is that right?
A. Yes.
Q. And that's the number that you said that gets capitalized; is that right?
A. Yes, because it's the sustainable number.

Q. Okay. And let's -- and I take it that you calculate your terminal value in this little corner box

here. That's called terminal value --
A. Yes.
Q. -- on page 36. So your terminal. That's $66 million, right? And you're using cash flow; you're not using EBITDA for this, right?
A. Yes.
Q. And that's the way you do it, right, you use cash flow?
A. That's the customary way of doing it.
Q. And the cash flow number for 2017 is 61.78 million, right?
A. Correct.
Q. And the increase from the previous year of 46 million, you know, relatively similar to the EBITDA increase. But the number in the terminal net cash flow isn't the 61 million, it's a higher number; isn't that right?
A. Yes.
Q. And the reason it's a higher number, isn't it, because you excluded in creating the terminal net cash flow the ACP storm proofing expenditures and 25 percent of road construction costs; isn't that right?
A. Yeah, that's because they were done with it.

Q. Isn't that right, sir?
A. Yes.
Q. And when you apply to that number your 7 percent cap rate, you come up with $947 million; isn't that right?
A. Correct.
Q. And when you bring that back to present value, it's $362 million; isn't that right?
A. Correct.
Q. So half your -- more than half of your valuation from your DCF comes from your terminal value; isn't that right?
A. Correct.
Q. And in large part, that's because of the increase in cash flows over the life of the ten-year projection and the significant jump between 2016 and 2017; isn't that right?
A. I wouldn't attribute it to any particular aspect of this. There are a number of other influences.
Q. But you will acknowledge, sir, that the reasons I stated are large contributors?

A. Well, certainly it contributes that we're using -- that we're harvesting about 100 million board feet versus about 81 million, which was flat for the prior nine years, and which if capitalized in perpetuity

292

would have ridiculously undervalued it.
Q. Now, in order for this report, this DCF to be accurate, you said it depends on whether Mr. Fleming's cash flow is accurate?
A. Correct.
Q. Now, are you aware that 95 percent of redwood is used for decking and fences?
A. Well, I think I heard Mr. Dean testify to that effect yesterday, but I hadn't heard that before.
Q. You're involved in this matter and you don't know what the end use is for redwood yet?
A. Well, I don't know whether Mr. Dean's statement is correct or not.
Q. Fair enough. Now, do you think that given the reduction in new home starts, the real estate recession and the economic slow-down that redwood log prices may go down over the next several years?
A. It's possible.
Q. Would that affect the EBITDA in those years?
A. Yes.
Q. But Mr. Fleming's cash flow projections have EBITDA increasing all those years; isn't that right?
A. Correct.
Q. Now, if EBITDA went down in those years, that would adversely affect valuation; isn't that right?

293

A. Not necessarily.
Q. Well, let me ask you the question this way. Near term cash flow is more valuable than long-term cash flow in a DCF; isn't that right?
A. A dollar of near term is more valuable than a dollar of far term.
Q. So if the EBITDA went down in a year and unless it was made up in future years, it will -- it will reduce the valuation; isn't that correct?
A. Right.
Q. Now, when you calculated the discounted discount rate for your DCF, you used two inputs?
A. Yes.

Q. One of them was the weighted average cost of capital?
A. Yes.
Q. And if I call that a WACC, will you understand that?
A. Yes.
Q. That's, for the court reporter, W-A-C-C?
A. Yes.
Q. And the other input you used was did it imply a discount rate from the three bids we talked about, the bid from the Nature's Conservancy?
A. Yes. I think we called it an implied rate of

return. That's what our intention was.
Q. And that's on -- you describe this on page 35; is that right?
A. Not completely.
Q. Are you on page 35, sir?
A. Yes.
Q. If you look at the third bullet point, it says, and I quote, "The selected discount rate and cap rate for the income generating timberlands is 10.5 and 7 percent representatively. These primarily are analysis and rates implied from the preliminary bids for the timberlands received to date."
A. Correct.
Q. I think that's all we need. And that's what we were talking about a moment ago, right?
A. Yes.
Q. Now, can you turn to paragraph 11 of your proffer.
A. Okay.
Q. It reads, and I quote, "Since the bidder's, they have submitted preliminary indications of interest likely utilized harvest assumptions similar to those in the ten-year harvest plan in formulating their bids, Houlihan Lokey believes the analysis of the implied discount rates from the various bidders is also

relevant." Did I read that right?
A. Yes.
Q. Now, you've never talked to any of the bidders, have you?
A. No.

Q. And you're not aware of what harvest plans they had access to, are you?
A. No.
Q. So how can you make an assumption that the harvest plan they used was similar to the one that Houlihan Lokey used?
A. Well, everybody is working with the same basic information here. Everyone starts with the company's inventory. There is a lot of previous work done on forecasts. The company had its own forecasts. As a practical matter, I believe I heard in the chatter in the meetings I had that an expert known by one of our experts was talking about being retained by one of the bidders. I don't know what their information was, but I know that they at least started from the same information that was available for everybody else. You know, I don't know when they received it. I don't know to what extent they analyzed it before they did the bids.
Q. Now, so in order for you to imply a discount rate from the three bidder's bids, you would need to know

what kind of cash flows they thought there would be; isn't that right?
A. No. No, I don't.
Q. So you're saying if you didn't make the assumption that their harvest plan was similar to the one -- the ten-year harvest plan, that you still would have applied a discount rate?
A. Well, we had to have something to work from. I thought that was a reasonable assumption for this purpose.
Q. That wasn't my question, sir. My question was whether or not, without making that assumption, you could have calculated an implied discount rate from the three bids?
A. Well, we could have used one of the other forecasts.
Q. But you would have had to assume what forecast they were using?
A. Well, we would have had to pick a reasonable forecast back into the required rate of return. There were forecasts all over the place.
Q. But in order to --
A. And there still are.
Q. But in order to imply a discount rate from a

particular bidder's proposal or expression of interest,

you would need to know what the cash flow looked like and what the harvest rate was; otherwise, you don't know what the discount rate is because you don't have any static numbers in the model; isn't that right?
A. Well, you have to have a set of reasonable cash flows to work from, yes.
Q. So you just assumed that all three of these bidders used the same -- you know, the same harvest rate that you were using; isn't that right?
A. No. We made our assumptions clear. We made it clear that we didn't know what the bidders. I mean, our analysis here showed that we used what cash flows we used. We used Mr. Fleming's ten-year forecast, which is eminently reasonable and actually quite similar to a number of the other forecasts that are out there.
Q. Sir, you say in 11, "Since the bidders that have submitted preliminary indications of interest likely utilized harvest assumptions similar to those in the ten-year harvest plan." And what I'm trying to understand is I understand that you needed to assume something if you wanted to imply a discount rate.
A. Right.
Q. I understand that. But the question I'm asking is: How can you say that they likely utilized harvest assumptions similar to those in the ten-year harvest plan

without asking them and having them tell you?
A. Well, I assume that they're reasonable people; and therefore, you know, looking at reasonable forecasts falls under that, and it's reasonable for me to look at for this -- for this purpose.
Q. Now, you've looked at a number of expert reports in this case, haven't you?
A. Yes, I have.
Q. And you're aware that the harvest forecasts for each expert are different; isn't that right?
A. That's correct.
Q. So reasonable people could make different harvest forecasts; isn't that right?
A. And, in fact, there are some that are quite dramatically different.
Q. So you can't just say if they were reasonable

people they use the same ten-year forecast that we use
because there are a number of other people in this case
who didn't use the same forecast that you used; isn't
that right?
A. Well, there are some that are reasonable and
some that aren't.
Q. Now, if you didn't have an assumption as to a
harvest rate, you can't imply a discount rate from the
bids; isn't that right?

A. That's correct.
Q. Have you ever seen a 50-year forecast created
by Fleming Associates?
A. No. I take that back. In order to value the
MMCAs, that's what you need, although the first 50 years
you don't get any cash flows because -- in the first 40
years you don't get any cash flows because you can't cut
the trees.
Q. Now, other than Mr. Fleming, nobody else in
this case is using a ten-year cash flow analysis; isn't
that right?
A. I believe that's correct.
Q. Everyone else is using 50-year analysis?
A. Well, there was a 20 year Newco business plan
where it morphs into various lengths as well. 50 years
is not uncommon.
Q. 50 years is not uncommon in the timberland --
A. It's not uncommon in this proceeding.
Q. But is it uncommon in the timberland valuation
business?
A. I'm told that that's the case, although I don't
have personal experience in it.
Q. And that's because you don't have personal
experience valuing timberlands; isn't that right?
A. Yes.

Q. Now, there's a bunch of inputs in addition to
the cash flows in creating the discounted cash flow
analysis; isn't that right?
A. Well, I'm not sure what you mean. Can you be
more specific?
Q. That's fine. If you can't answer it yes or no,
I'll ask another question. One input into the discount
cash flow methodology would be the discount rate?

A. Correct.
Q. And another one is used to calculate the discount rate would be the beta?
A. Correct.
Q. And there's two betas that you use, a levered beta and an unlevered beta?
A. Correct. Well, they're mathematically interrelated. There's really only one.
Q. And there's the cost of debt?
A. Yes.
Q. Cost of equity?
A. Well, the cost of equity is derived in part from the beta.
Q. But it's an input?
A. Yes. But the cost of debt is independent. The cost of equity depends on the beta. The beta is the starting point.

301

Q. Now, are you aware that Mr. DiMauro in his September valuation used an 11.5 percent midpoint discount rate?
A. Well, that wouldn't surprise me. I don't remember what the exact number was.
Q. Can you turn to page 47 of what you refer to as your big report?
A. Okay.
Q. You did a valuation bridge between your valuation and Mr. DiMauro's valuation in his declaration; is that right?
A. Yes.
Q. And in order to do that, you would have had to review and analyze Mr. DiMauro's valuation; is that right?
A. Correct.
Q. And you say on page 47 in the, I guess, the second diamond, "discount rate and cap rate ranges of 10 to 13 and 7 to 9.5 respectively for the income producing timberlands"?
A. Yes.
Q. And then if we go back to Mr. DiMauro's report, which we looked at earlier, do you still have that?
A. Somewhere here. Okay.
Q. In paragraph 14, which we looked at before,

which summarizes on page 5 summarizes his DCF. It says, "applying an illustrative market-based discount rate of 10 to 13 percent with an illustrative market-based residual capitalization of 7 to 9 and a half percent"?
A. Yes, sir.
Q. And that's what you picked up in your bridge; is that right?
A. Correct.
Q. And then if I wanted to see what he used as his multiple discount rate, I can go to page 11, Exhibit A; is that right?
A. Yes.
Q. And if I look on the top left-hand corner in the second line, it says discount rate, 11.5 percent?
A. Yes.
Q. And so that was the midpoint discount rate that Mr. DiMauro used; is that right?
A. Correct.
Q. Now, initially, before doing anything with the implied discount rates from the bids, you calculated a WACC; is that right?
A. Yes.
Q. And the WACC you calculated was 11.2 percent?
A. Correct.
Q. And that is not that different than what

Mr. DiMauro calculated; is that right?
A. That looks that way, yes.
Q. And the higher the discount rate, the lower the price?
A. You mean the lower the value?
Q. I'm sorry. The lower the value?
A. Yes.
Q. And the lower the discount rate, the higher the value?
A. All other things being equal, yes.
Q. Now, was there any reason to not use the WACC as the discount rate, other than the fact that you had gotten the three expressions of interest?
A. Well, as I mentioned, the goal -- in my direct testimony, the goal of the valuation exercise in the first place is put yourself in the buyer's shoes. That's why these bids were so important because they were buyers. I mean, it may have been preliminary, but there was some thought put into that and they were all

motivated.

And, you know, none of them were really -- they all had good reasons to want to proceed with the purchase of Scopac. So their frivolous participation would have been not very bright on their part. We took them seriously. And we thought that it was important to try

304

to derive from them what they were really thinking about with respect to a required rate of return. So that's why we decided to use them as well and see what we could come up with. And in fact, through our analysis, I think we came up with a range that went from 10 percent to about 11 and a half percent.

MR. BRILLIANT: Your Honor, I'd like to move to strike and ask you again to instruct him to witness to answer the questions.

THE COURT: I thought he was answering the question.

MR. BRILLIANT: Then I'll ask it a different way.

Q. (By Mr. Brilliant) Other than these three bids, there was no reason to use a discount rate less than the WACC in your report; isn't that right? Yes or no?

A. Would you please ask it one more time.

THE COURT: If you didn't have the three bids, would you have used the WACC?

Q. (By Mr. Brilliant) Was there any justification to --

A. Probably, yeah.

Q. And at your deposition, can you turn to page 261, paragraph 23.

305

A. You're going to have to give me the reference again.

Q. Actually, I'm sorry, page 261 line 23. Question -- are you there, Mr. Daniel?

THE COURT: You can see it on the screen.

A. Well, it makes me dizzy looking for it there. I've got it.

Q. Okay. Question: "Well, what would -- what is your justification in this situation for using something less than the weighted average cost of capital?"

Answer: "Well, it's the bids. Without the bids, you know, there is no justification that I can think of."

So isn't it true that there's no justification for using anything less than the weighted average cost of capital but for the bids?

A. Well, I don't think that that's what I said. I think that the bids, you know, were meaningful and we wanted to take them into consideration. And if they didn't exist, there wouldn't have been bids, so we wouldn't have had a way to observe what a real investor wanted with respect to a rate of return. So we probably would have used the WACC. I'm not guaranteeing that that's the case, but we probably would have used it.

Q. I just want to make sure that the record is

clear. When you said you're not sure that's what you're saying, you didn't say that that wasn't the question I asked and that wasn't you gave. You're agreeing that this is an accurate reflection of your deposition; is that correct?

A. I'm getting really confused here. I think what I testified to in this deposition are entirely consistent. I don't see an inconsistency.

Q. Sir, I'm not asking you if it's inconsistent. I'm just asking you if this is what you testified at your deposition?

A. I certainly said that at my deposition.

Q. Thank you. Now let's turn to page 44 of your report, sir. Now, this is where you list the implied discount rates from the bids; is that right?

A. Yes.

Q. Now, ultimately, the discount rate that you came up with is shown in the last line before the footnotes, right, where it says Houlihan Lokey valuation 10.5 as a discount rate?

A. Yes.

Q. That's ultimately your discount rate, 10.5, right?

A. That's the midpoint range, yes.

Q. And the WACC was 11.2?

A. Correct.

Q. Now, you used 3.5 percent growth rate in your -- or Mr. Fleming uses 3.5 growth rate in your cash

flows; is that right?
A. No, I don't think that that's precisely correct.
Q. You don't think that's correct? Do you want to -- can you tell from looking at your discounted cash flow chart, the cash flows that Mr. Fleming did? Does that show?
A. I don't understand your question about Mr. Fleming.
Q. Mr. Fleming did the cash flows, right?
A. Right.
Q. I guess I'm getting tired, too. Maybe I asked that question wrong. Did you use 3.5 percent as the growth rate in your analysis?
A. I used 3.5 percent as the growth rate in our terminal calculation.
Q. So you used 3.5 in the terminal valuation. Now, if I look at your chart here and I go to Bidder A, and in the 3.5 percent cap rate assumption --
A. Yes.
Q. -- the implied discount rate for Bidder A, which is TNC, is 11.52 percent; is that right?

A. Yes.
Q. And that's actually higher than the 11.2 WACC?
A. Yes.
Q. And for Bidder B, it's 11.32 percent?
A. Yes.
Q. And that's higher than the 11.2 percent WACC; is that right?
A. Yes.
Q. And Bidder C, the cap rate of 3.5 is 10.83 percent; is that right?
A. Yes.
Q. And that's less than the 11.2, but that's still higher than the 10.5 that you use; is that right?
A. Yes.
Q. So leaving aside anything else, if you just had the four inputs of the WACC and the three preliminary bids, all four of those numbers are higher than the 10.5 discount rate you used; isn't that right?
A. All four of the numbers that you just read off plus the 11.2 percent WACC.
Q. Well, the three numbers, plus the 11.2?
A. I'm sorry. Yes, they're all higher.

Q. They're all higher than 10.5?
A. Correct.
Q. Now, with respect to -- you used a 2 percent

cap rate assumption, the Bidder A implied valuation is still higher than 10.5; isn't that right?
A. Correct.
Q. And the Bidder B is higher than the 10.5?
A. Correct.
Q. And Bidder C, the Beal bid, it would be 10.04, that would be lower than the 10.05?
A. Correct.
Q. So you would have three data points, 11.2 on the WACC, 10.77 on the Nature Conservancy, 10.57 on Bidder B, and 10 percent on the Bidder C. So three of the four inputs there would have been higher than the 10.5 weighted average cost of capital you used; is that right?
A. Correct.
Q. Now, if you change the discount rate from 10.5 percent to 11 percent, do you know what the effect it would have on value would be?
A. Well, there's a sensitivity table.
Q. And what page is that on?
A. Page -- where is it?
Q. Page 37?
A. Page 37.
Q. And so if you stuck at 3.5 percent for the growth rate, is that what you used as the growth rate?

A. Yes.
Q. 3.5, right?
A. Yes.
Q. And if you used 10.5, you get 614. But if you go to 11, you would only be at 570, and that's a reduction by 44 million?
A. Correct.
Q. Now, if you used Mr. DiMauro's discount rate of 11.5, which is a slight bit higher than the last two you calculated, which is what you would have used if you didn't have the expressions of interest that you used, the number would have been -- everything else held equal, 532 million, which is a reduction of about 88 million; is that right, roughly?

A. That's beyond my mental calculation capabilities at this late hour.

THE COURT: He's just reading the chart across.

A. He wants me to do subtraction here.

Q. I think it's 18 million less than 100?

A. Something like that.

Q. So it would be 18 less than 100 would be 82?

A. Right.

Q. Now, as I said -- or as you testified in your report and as the sensitivity analysis shows, 3.5 percent

is the Gordon growth rate you used, and so the 3.5 percent cap rate assumption is a better indicator than the 2 percent; isn't that right?

A. Well, I wouldn't say better.

Q. More relevant, given your analysis?

A. No, I wouldn't say that either. You wouldn't have them both on this page if they weren't both relevant.

Q. My question is not whether the 2 percent is relevant; the question is what's more relevant. Is the number you actually used for your Gordon growth rate more relevant than the lower number?

A. No.

Q. Okay. So the discount rate that you used is at the high end of all that you had; is that right? It's higher than five of the seven inputs that you had; the WACC, the three implied values with the 3.5, and the three with the 2 percent, right? Of the seven inputs you had, your 10.5 is, you know, it's lower than all of them except for one of them; isn't that right?

A. Correct.

Q. If you would turn to page 40 of your report. The median for the unlevered data is .85; is that right?

A. Correct.

Q. And the mean is .84?

A. Correct.

Q. And the median for the leverage data is 1.01 and the mean is .98; is that correct?

A. Yes.

Q. Now, you selected an unlevered beta of .75 and a levered beta of .94; isn't that right?

A. Yes.
Q. And both of those numbers are below the mean and the median; isn't that right?
A. Yes.
Q. Now, isn't it true that a lower beta is a lower weighted average cost to capital; and therefore, a lower discount rate and, again, a higher valuation?
A. Correct.
Q. Now, you justify your below median and mean selection of a discount rate and beta on the fact that you believe that Plum Creek is the best of the comps; is that right?
A. I'm sorry, I missed the question.
Q. You justify your below the median and mean selection of a discount rate and beta on the fact that Plum Creek is a best comp; isn't that right?
A. I don't think that's the only reason.
Q. Is that one of the main reasons?
A. I think it's just as important that we would

expect much more volatility going forward for Scopac.
THE COURT: Are you on page 40 in that report? You'd be on page 44 in the computer.
SPEAKER: I apologize, Your Honor. I'm not familiar with Mr. Penn's machine.
MR. BRILLIANT: We actually had moved to the beta on 41, but that's --
THE COURT: I think if you go to what is called 4478, you'll be on the page that he wants you to be on. Maybe I'm wrong.
SPEAKER: You're right, Your Honor. It's hard for me.
THE COURT: Just gown to the bottom and type in that little box. It's actually 44, not 45.
Q. (By Mr. Brilliant) We have now talked about two out of three methodologies. The one we haven't talked about in any detail is what you refer to as the market multiple methodology; is that right?
A. Yes.
Q. And let me ask you a couple of questions about that. This is not a methodology that you often use, is it?
A. The market multiple methodology?
Q. No, a run-rate EBITDA analysis?
A. Oh, we always normalize earnings. We may not

do it quite this way, but I mean, if something is unusual, we always normalize it.

Q. When was the last time you used a run-rate EBITDA in a valuation?

A. You mean an average of historical and expected future EBITDA?

Q. Yes.

A. Over this number of years, probably very infrequently.

Q. Right. And if I remember correctly -- and if you disagree, I guess we can go check in the deposition transcript. If I remember correctly, you said you hadn't used it in at least five years?

A. I'll take your word for it. It doesn't surprise me at all.

Q. If I asked you was it as long as ten years, do you remember what you told me?

A. I don't remember. I mean, it's not common. And, you know, there could have been other ways of doing it as well. I mean, that's just the way we chose to do it here because 23 wasn't representative, and we had to do something about it.

Q. So you recognize that it's not a -- it's not a common method?

A. This particular application of it is something

that's not that common.

Q. And what -- in a market multiple methodology, the most common method would be to use what's called a spot EBITDA; is that right?

A. Not necessarily. For example, if we had a subject company that had been running along at 100 million dollars worth of EBITDA for the last five years and all of a sudden it dropped to 50, we had projections that showed it was going to, you know, 100 the next fiscal year and 110 after that, what we would probably do is for LTM, use 100 because that had been historically where they were. And if the projection was reliable, we would say 50 doesn't make any sense. I mean, their factory burned down or whatever, and so we need to normalize it. And this is just a variation of that.

Q. Okay. Let me ask the question, you know, again. The most common way to do a multiple analysis is

a multiple of the last four months EBITDA or spot for multiple; isn't that correct?
A. No, not necessarily.
Q. Can you turn to page 290, line 15 of your deposition.
A. Okay.
Q. Question -- are you there, Mr. Daniel?
A. 290.

Q. Line 15.
A. Wait a second. All right.
Q. Question: "Now, what is the -- what is the most frequent way of doing a multiple analysis?"
Answer: "Basically you look at LTM -- which I take it is last 12 months -- and a couple years forward. Each year use different multiples for each year derived from the comps based on analysis projections for the one or two years out and apply multiples based on the LTM."
Question: "Now, if you did that, instead of the LTM, used the 2007, you know, multiple times multiple derived from the cost, what valuation do you come up with?"
"Well, you can do the math yourself."
I won't read the rest. Does that -- do you remember that question and answer?
A. Yes, I do.
Q. Now, in doing your run-rate EBITDA, how did you do it? You took an average of the EBITDA for, what, six years historical; is that right?
A. I think it was six. I can't recall whether it was five or six.
Q. And then you used how many on a go-forward basis?
A. I think three.

Q. And on a go-forward basis, you used the numbers projected by Mr. Fleming; is that right?
A. Correct.
Q. And that shows the large 78 percent increase in EBITDA from the --
A. From the 23 years.
Q. Can you turn to page 2 in your report, the thicker report. And if you can --
A. Okay.

Q. -- keep your hand on that page and then also turn to page 24. And I'm going to apologize for not making you a demonstrative, but we don't have office services here in Corpus, which I hope to rectify by the time we come back at the end of the month. But I wasn't able to do something. But you have here 2007 EBITDA, 23.1 on page 2; is that right?
A. Yes.
Q. In 2006 you have 42.4; 2005 you have 51.8. And if you turn to page 24, you can see that 2004 EBITDA was 45.8; is that right?
A. Yes.
Q. And in 2003 it was 51.8?
A. Yes.
Q. And 2002 was 44.0; is that right?
A. Right.

318

Q. And so what you did, what you did is you averaged 23.1 from 2007, 42.4 from 2006, 51.8 from 2005, 45.8 from 2004, 51.8 in 2003, and 44.0 from 2002. You took an average there and you applied a multiple to that; is that right?
A. Yes.
Q. And then you went forward three years. For 2008, 39.6; in 2009, 41.1; in 2010, 42.5. And you averaged the three of those and you applied another multiple to that; is that right?
A. Not on this page.
Q. I didn't mean on this page, but that's what you did essentially, right?
A. Correct.
Q. And then you averaged the two together and you came up with a valuation based on a multiple analysis; is that right?
A. Well, I don't know about the averaging part either. What you said first is correct.
Q. Well, it's your report. Do you remember how you dealt with the two in your report? Did you average them? Or how did you come to one number rather than, you know --
A. I've lost you. I'm sorry.
Q. You have a historical EBITDA multiple and then

319

you had a forward multiple; is that right?

A. Correct.
Q. And then you turned that into a valuation; is that right?
A. Yes.
Q. And somehow you must have weighted the two or done something else to come up with the just one number or range; isn't that right?
A. Well, you can see the next bit of math here on the following page.
Q. On page 25?
A. 25.
Q. Mr. Daniel, it's page 25?
A. Yes.
Q. So you took the 2002 to 2007 run-rate EBITDA, the average was 43.1, you applied 13 range, it was high of 560 to 647. You did the same thing with 2008 to 2010 and then you averaged the two; isn't that right?
A. Yes.
Q. Now, let's go back to page 2. Now, you used -- on page 25 you used the 2002 to 2007 run-rate. And the numbers, you know, average out to 43.1. But the 2007 is very low. But in the outer years, when the harvest rates were higher -- we've already discussed how the harvest rates have come down rather dramatic over the last six

years. So the harvest rates were higher and the cash flows were higher. You're averaging all that in; isn't that right?
A. Yes.
Q. Now, in 2005 you're averaging in an EBITDA of 51.8 million. In 2003, just coincidentally, you also had a 51.8 million EBITDA. When is the first time that Mr. Fleming's projection, even with his rising EBITDAs, that you get to 51.8 million EBITDA?
A. At the end.
Q. Excuse me?
A. At the end.
Q. Between 2015 and 2016?
A. Correct.
Q. So in using an EBITDA, instead of using a multiple off a current number, by averaging in these other numbers, you're using EBITDAs that the company doesn't expect to achieve for almost ten years; isn't that right?
A. That we don't expect the company to achieve. I

don't know what the company expects.
Q. But that you don't expect or Mr. Fleming doesn't expect the company to achieve?
A. Right.
Q. So you're basically figuring out future value

of a company, the value of the company today based on its future cash flows by using historical EBITDA that occurred at a point in time when the company had a harvest rate that's dramatically different than the one it has today and the one that even Mr. Fleming predicts for the future; isn't that right?
A. Right. Correct.
Q. Now, let's talk about the multiples that you used. The multiples that you used are on page 25?
A. Yes.
Q. And in 2002 to 2007 run-rate EBITDA, the multiples range from 13 on the low end to 15 on the high end; is that right?
A. Yes.
Q. And on the historicals, you had four comps; is that right?
A. I'm sorry?
Q. When you were coming up with the multiples for the historic EBITDA, you had four comparable companies; isn't that right?
A. You mean we had multiples for four comparable companies.
Q. Yes.
A. Yes, we did.
Q. And on the forward-looking EBITDA, 2008 to

2010, you only had multiples from three of your comps?
A. It's because Pope didn't have any projections.
Q. I'm tempted to say you're right, but I guess I'm supposed to ask the questions, so I won't do that, but I believe that's right.
Now, let's look at the run-rate EBITDA analysis. You calculate from your comps the mean and the median multiples on the historic basis on page 22; is that right?
A. Yes.
Q. And the mean for your four comparable companies is 10.5; is that right, the average?

A. Yes.
Q. And your median is 10.0; is that right?
A. Correct.
Q. And the maximum is 15; is that right?
A. Correct.
Q. Now, there's four comps, right, Potluck, and its average was 11.1; is that right?
A. It's Potlatch. It's 11.1, yes.
Q. Excuse me. That's a disguised New York accent. It's 11.1, Potlatch; is that right?
A. Yes.
Q. Thank you. Now, at Pope Resources, the average is 7.1; is that right?

A. Yes.
Q. And at Rayonier it's 8.9; is that right?
A. Yes.
Q. Now, all three of those numbers -- or all of three of those are less than the 13 low end of your range; is that right?
A. Yes.
Q. And, in fact, the mean and the median are 30 percent below the 13 low end of your range; is that right?
A. I'll have to take your word for it on the percentage.
Q. Well, I think it's kind of easy. Three out of 10 is 30 percent, I think.
A. It's not easy for me at this point.
Q. But it's significantly below the low end of the multiple?
A. It's below the low end.
Q. And the fourth comparable, Plum Creek Timber Company, had an average of 15 times?
A. Correct.
Q. Now, ultimately you selected 13 to 15 as your multiple; is that right?
A. Yes.
Q. And if you would have selected the mean or the

median, you would have come up with a much lower valuation; is that right?
A. You would come up with something lower.
Q. And the reason that you used the high end of

your range, which basically is completely discounting the three of your comps that you're really just relying on Plum Creek is because you view that Plum Creek is the closest comparable company; is that right?
A. Yes.
Q. Now, with respect to the 2008-2010 run-rate analysis, that's on page 23, right?
A. Correct.
Q. And there, as we said, there's only three numbers, right, three --
A. Yes.
Q. And the numbers there are 8.5 for Potlatch; is that right?
A. Yes.
Q. And 9.1 for Rayonier?
A. Yes.
Q. And 14.7 for Plum Creek?
A. Correct.
Q. And you weren't able to get future multiples from Pope Resources; is that right?
A. Right.

Q. Now, the median -- let's do the median, which is probably more relevant. The median is 10.8; is that right?
A. Yes.
Q. And the median in the middle is 9.1; is that right?
A. Yes.
Q. And the selected multiples you chose were 12 to 14; is that right?
A. I believe so. Let me just look.
Q. Page 25.
A. Yes.
Q. And the low end, the 12 number is significantly higher than the mean; is that right?
A. Yes, that's correct.
Q. And it's higher than Potlatch, higher than Rayonier, right?
A. Correct.
Q. And the reason you did that is because, again, you believe Plum Creek is much more comparable to Scopac; is that right.
A. We believe it's the better comp, yes.
Q. So effectively, you discounted the other two

entirely and just relied on the one that you thought was the most comparable; is that right?

A. Well, I wouldn't put it quite that way, but we put more weight on Plum Creek certainly.
Q. Significantly more weight, right? I mean, your low end number is higher than either of the other two?
A. We put more weight on it. I'll leave the shadings of language to you.
Q. And based upon, you know, this analysis on page 25, you show your enterprise value range of 530 to 615; is that right?
A. Yes.
Q. Let's talk about the comps a little bit. I believe you disclosed them -- describe them starting on page 56; is that right?
A. It sounds right.
Q. Can you turn to page 56 for me.
A. Yes.
Q. Plum Creek Timber Company is the largest private timberlands owner in the United States; is that right?
A. That sounds correct as well. And it may say so in this page. It does.
Q. And Plum Creek Timber Company doesn't have any timberlands in California, does it?
A. I don't believe it does.
Q. And it doesn't -- it doesn't harvest redwood,

does it?
A. I don't think it does, no.
Q. And it has operations in 18 different states; is that right?
A. That's what it says here.
Q. And during fiscal year 2007 it harvested 20.4 million tons of timber; is that right?
A. Yes.
Q. And it's an integrated company, an integrated timber producer, isn't it?
A. I believe that's correct, but I'm not sure.
Q. Well, look at the second paragraph. It says, "the company's products include lumber products, plywood, medium-dense fiberboard and related byproducts such as wood chips?

A. Yes.
Q. And then if you look at the revenue breakdown, 28 percent of the revenue is manufacturing?
A. Yes.
Q. So this would be like Newco is going to be from the standpoint that it has both a mill and timberlands?
A. Well, this takes it a step further because some of these products from Plum Creek require more input than lumber does.
Q. But I mean, this is clearly not a pure

timberland company?
A. That's certainly true.
Q. And it's not comparable in the fact that it doesn't have just, you know, one property of timberlands, right?
A. That's why we started with the DCF.
Q. And that's my question. I'm correct about that, aren't I?
A. Of course.
Q. And the species of what it harvests are different, right?
A. Absolutely.
Q. And the geographic area where it operates are different?
A. Yes.
Q. And the regulatory structure is different?
A. Yes.
Q. And its growth rate is significantly different?
A. Well, with different species and different climate, I would expect the growth rate to be different.
Q. And the fact that it has significantly -- significant other operations other than just timber that Scopac has also makes it, you know, much different; isn't that right?
A. Well, that's certainly a difference as well.

Q. But your justification for using multiples at the high end is because you believe that Scopac is more similar to Plum Creek; isn't that right?
A. Our justification is that we believe an investor would look at these four comps and look closer to the high end where Plum Creek falls because of a number of reasons, and it's potentially a similar

investment to Scopac going forward. The investment characteristics are probably more important than the operational characteristics.

Q. Well, let me ask you the question this way. With respect to the multiple analysis, at the high end, you're using for the 2002-2007 historical run-rate EBITDA, you're using 13 to 15 times; is that right?

A. I think that's correct.

Q. And Plum Creek's average is 15 times?

A. Yes.

Q. So do you think that a company -- that an investor, that an investor would think that an investment in Plum Creek, the largest landowner, diversified in the largest timberlands operator in the United States, divided into 18 different states, would trade at the same multiple as Scopac which is in California in a different species?

A. It could very well be the case.

Q. But this is your report and that's how your numbers look. So are you saying you think that's likely?

A. The investment characteristics, we would expect to be similar to Plum Creek's REIT. It has a lot of income. It's stable in that respect. It gives a capital appreciation of a similar investment to what you would expect Scopac going forward once things get rational. And if the company proceeded the way Mr. Fleming suggest they proceed, cut back on harvest in the earlier years, let the forest regenerate, get to a point where it's on a stable basis, harvest 100 million board feet per year forever, cutting what it grows, that sounds like a pretty stable, reliable investor -- investment to me. And we think that those things are more important than whether one makes plywood or not.

Q. But what you described is not what Scopac is today; that's what Scopac might potentially be in the future?

A. Well, that's what we expect Scopac to be in the future based on a reasonable analysis.

Q. That's what Mr. Fleming expects or that's what you expect?

A. That's what I expect based on what Mr. Fleming expects, but we're not alone. There are a lot of projections here that are quite similar to Mr. Fleming's.

It's rational. It makes sense.

Q. But you're not -- you're not a timber expert, so how can you, you know, have any expectation as to the future harvest rates other than, you've testified, other than what Mr. Fleming has told you?

A. Well, I've learned a lot about timber, and certainly I'm relying on Mr. Fleming's cash flows.

MR. CLEMENT: Your Honor, would it be appropriate to take a break? We've been at it for quite a while.

THE COURT: Okay. We'll take, what, ten minutes?

MR. BRILLIANT: Can we have a few more than that, Your Honor?

THE COURT: How much more.

MR. BRILLIANT: 15.

THE COURT: 15 it is.

(A recess was taken.)

THE COURT: All right. Go ahead.

MR. BRILLIANT: Thank you.

Q. (By Mr. Brilliant) Mr. Daniel, on direct I believe you testified that Mendocino had offered to purchase Palco for $20 million at some point in time; is that right?

A. Well, that's what Mr. Dean testified yesterday.

Q. And when was that?

A. When was the offer?

Q. Yes.

A. Well, according to his testimony, it was in 2006.

Q. And that was to purchase the stock in Palco; is that right?

A. Right.

Q. Is that right?

A. Yes, that's correct.

Q. And at that point in time, are you familiar with what the assets of Palco were?

A. Palco owned the stock of Scopac, plus a bunch of other stuff. But I can't tell you precisely what it consisted of.

Q. And -- but if you didn't know what the assets were of Palco, how were you able to determine what value --

A. The enterprise value?
Q. Yes.
A. I just added up the equity in the debt. There was about 50 million of debt at Palco, and there were the timber notes at Scopac, plus the line, less cash, less the SAR account. And you just do the math; you come up with 780 million.

Q. All right. Wasn't there -- let me ask you a question. Did -- tell me -- it's a hypothetical. Tell me if this is another explanation for what the bid was all about. Now, Palco went to Scopac and if you view that the Scopac plans are worth less than the debt, and that was a zero, but Palco also owned the mill, some of its own timberland, it had accounts receivable, and at that point before the Marathon debt if it had $20 million of equity in its own assets and 100 percent of the LLC interest in Scopac, which was worth zero, might that have been a good investment and might it not lead you to believe that it implies a valuation greater than $20 million?
A. I'm just doing the math. I mean, I'm just saying what it implies based on what the balance sheet looked like at that point in time.
Q. So you're not saying that in your expert opinion that that, you know, means that it was worth that; you're just saying that just doing math and assuming that the equity was worth more than the debt, that --
A. No. It's just an addition. 20 million of equity plus 50 million of debt at Palco, plus whatever it was at Scopac, less the cash, less the SAR account will give $781 million.

Q. Okay. And then if the assumptions of your addition were wrong, then the implication would be --
A. Well, it's just debt. And then the 20 million Mr. Dean gave us. And we, you know, looked at the balance sheet as of that point in time, and, you know, what the debt and cash and SAR account were, and so we added it up.
Q. Following along with Mr. Clement's semantics, you also, in addition to the big report, you did what he refers to as the little report; is that right?

A. Yes.
Q. And that was a valuation of the securities offer in the Marathon joint plan of reorganization; is that right?
A. Yes.
Q. And February 29th when you were first asked to be the witness by the co-CEO of Houlihan, there was already a draft report of what's ultimately become the little report; isn't that right?
A. Yes.
Q. And you reviewed it, made sure you agreed with it, and adopted it; is that right?
A. No.
Q. Okay. Well, but in any event, these are all your opinions at this point; is that right?

A. Correct.
Q. And at the conclusion of your analysis, the report did not change very much from the draft that was provided to you on February 29th; is that right?
A. The bottom line didn't, as far as I recall, but I really have no recollection of what was in the initial report. But the analysis changed quite significantly.
Q. Do you still have the deposition transcript up there?
A. Yes.
Q. Can you turn to page 324, and let's look at line 23. We can probably start at the question on line 13. "What had already been done when you first" -- question: "What had already been done when you first got involved by your team?"
A: "Basic analysis had been done. There was less change in that than in the other analysis, although there was some change." Was that your testimony in that deposition?
A. That's what I said.
Q. Now, you didn't speak with anyone outside of your team regarding this analysis, did you?
A. Regarding the analysis for the Scotia Pacific or for the notes?
Q. Yes.

A. I don't think so.
Q. Did you say --

A. I don't think so.
Q. And you didn't do any on-line research in connection with this valuation; isn't that right?
A. No.
Q. And Houlihan doesn't have the debt trading desk, does it?
A. No.
Q. And you didn't call anyone or have anybody on your team call anyone, an investment bank with the debt trading desk to ask them how they would value the notes with terms of the new timber notes, did you?
A. Correct.
Q. Correct, that you did not?
A. We did not. I did not.
Q. And you didn't call any lenders to determine what they would be willing to pay for the new timber notes?
A. No.
Q. And no one on your team did either, right?
A. Not that I know of.
Q. Now, the new timber notes would be secured by the same collateral as the existing notes; isn't that right?

A. Yes.
Q. And if your valuation is right about the company, there would be a huge collateral covered; isn't that right?
A. Well, we're talking about Newco. We didn't value Newco. Newco is a combination of Palco and Scopac.
Q. But you did -- you did value the lands?
A. We valued the timberland; that's correct.
Q. And the lands would be secured by the new notes?
A. The notes would be secured by the lands.
Q. Yes. Thank you. And yes, the notes would be secured by the lands; isn't that right?
A. Yes.
Q. But in preparing the valuation of the new timber notes, you didn't try to value the collateral as part of Newco, did you?
A. Well, we valued Scopac's timberlands, so we had some idea of what the timber was worth, yes.
Q. But you didn't use the value for the collateral that you're using for your Scopac valuation; isn't that

right?
A. I'm sorry?
Q. You didn't use in analyzing the value of the notes, the value of the Scopac lands that you've come up

338

with in your big report?
A. Well, there was no place for us to use it.
Q. Instead of relying on collateral coverage, instead you rely on leverage multiples; is that right?
A. That's correct.
Q. And you look at what your team selected as comparable companies in doing the analysis; isn't that right?
A. I'm sorry?
Q. I said you looked at what your team selected as comparable securities in doing the new timber note analysis that you did; isn't that right?
A. You said comparable companies before, and now you said comparable securities. Which do you mean?
Q. Comparable securities.
A. Okay. Yes.
Q. And you didn't find any comparables yourself; you relied on the ones that your team found; isn't that right?
A. Well, we discussed, you know, all the possible comparables and decided on which ones to use.
Q. But ultimately you used the ones that your team found?
A. No. Well, they found them, but, you know, we all decided jointly what to use.

339

Q. Okay. Do you remember -- could you turn to page 346 of your deposition.
A. Okay. Sorry, a lot of paper. Okay.
Q. Page 346, line 6, question: "Mr. Daniel, in analyzing the new timber loans, did you look at any comparable securities?"
Answer: "Well, we looked at things we thought were comparable or we wouldn't have this analysis here, yes."
Question: "And those were the three areas of securities that we talked about, the secured bank loans, the secured bank loans, new issues and secured notes?"
Answer: "Yes."

Question: "Did." On page 14, answer: "Yes."
"You have a list of recent secured loan financings?"
Answer: "Yes."
"Who put that list together?"
"My team. I'm not sure who worked within the team."
"Now, was that the same list that was there on February 29th when you first saw a draft of your report?"
Answer: "I don't recall."
"Did you ask that any of the comps be excluded?"

"Okay. I think the lists -- some of these things were different than what we're hearing now. I mean, one of the things that we decided to do was pare some of them down to comprise only the new issues here that were in first range that we thought was appropriate." Does that accurately reflect your testimony in your deposition?
A. Yes.
Q. And was your team who found the comps?
A. I'm not sure what you mean by that.
Q. They found them initially. You may have seen one or two, but --
A. Well, for example, in the new issue securities, we have in this report the sum total, all the new issues that have come out between August of 2007 and now with leverage ratios over five times. Nobody selected them. The market selected them.
Q. Now, did you -- you didn't use any timber notes in your analysis, did you?
A. No.
Q. And, in fact, you didn't look at the interest rates for any timber notes except for the existing Scopac timber notes, isn't that right?
A. I'm not sure that I understand your question, particularly the second part of it.

Q. I believe you testified in your deposition that you were aware of the existing Scopac timber notes and their trading levels and their applied interest rate. And then you said that -- do you remember that?
A. Correct. I think they're trading around 70,

something like that.

Q. And I believe you testified that other than with respect to the existing Scopac notes, you didn't look at any other timber notes in putting together what we're calling the little report; is that right?

A. That's probably correct.

Q. Now, the comps that you used, they're on page 14, is that -- of the little report; is that right?

A. Okay. What was the question?

Q. Is this your list of comps?

A. These aren't comps. These are just the whole market for new issues secured with greater than five times leverage. That's just the market. That's it. That's all that come up.

Q. But this is one group of secured loan financings that you think give a data point?

A. It's everything. There aren't any other ones.

Q. And that's because of your search parameter of five times leverage?

A. Correct.

Q. Well, were there other ways that you could have approached this other than using just a leverage test?

A. Well, I mean, the point of this is that once you get high leverage, you can't even issue debt. I mean, there were, what, seven issues here that are over five times. We're over ten times. The market is not taking this kind of debt. That's why there are only this many issues here.

Q. But real estate companies with -- or companies with collateral that doesn't vary in value are able to get higher rates of leverage; isn't that right?

A. I don't see any real estate companies here.

Q. Did you look for real estate companies?

A. We looked for everything.

Q. With five times leverage?

A. Yes.

Q. You just didn't -- so you didn't look at -- you didn't look for any other type of analysis other than five times leverage; is that right?

A. Well, for this particular -- these are new issues. I mean, you know, the point of this all is if we had a security, I was a bank and I wanted to go out and sell it, and, you know, I wanted to try to sell it with ten times leverage and a 5.5 percent coupon, no one would even talk to me.

Q. But let's look at the companies on this list. Servo Worldwide, are you familiar with that company?
A. It's in chapter, I think.
Q. Okay.
A. So is Scopac.
Q. But Newco is not?
A. Well, Newco doesn't even exist yet. It'll probably be in chapter a little while after it issues these notes anyway.
MR. BRILLIANT: Your Honor, I move to strike the last statement by the witness as being nonresponsive.
THE COURT: I won't consider it. Go ahead.
MR. BRILLIANT: Thank you, Your Honor.
Q. (By Mr. Brilliant) Linens & Things, that company is in financial difficulty as well; is that right?
A. I would expect a number of these are with that kind of leverage.
Q. And that's a retailer?
A. Yes.
Q. Remy International, that's an automotive company?
A. Yes.

Q. Also either in or having gone through a financial restructuring?
A. Correct.
Q. X-Rite, a manufacturing company?
A. Yes.
Q. None of these are timber note companies, are they?
A. They are not.
Q. And you also used an analysis based on the leverage loan market; is that right?
A. Correct.
Q. But you didn't look at timber notes; isn't that right?
A. That's correct.
Q. Now, you also did an analysis regarding what type of additional interest companies need to give in

order to have a pick toggle covenant in the document. Isn't that right?
A. Yes, we did.
Q. Now, the new notes are only partially pick for two years; is that right?
A. Well, nobody is buying pick notes these days either.
Q. Sir, please answer the question.
THE COURT: You have to answer the

question.
A. Yes, that's correct.
Q. But pick toggle notes generally are pick for a much longer period of time; is that right?
A. Correct.
Q. And generally pick toggle, you know, securities may be 100 percent?
A. It could be.
Q. So that's not really comparable to this two-year 50 percent pick that's in the new timber notes, is it?
A. Well, it's the best we could find.
Q. Now, what was the average cost of debt for the timber comps you used in your big report?
A. Overall, average cost of debt of around 7 percent.
Q. And that's much lower than the -- the senior loans and the pick toggle premiums and other things that you looked at; isn't that right?
A. Right.
Q. Now why didn't you start with those as the basis for doing an analysis?
A. Because the highest leverage ratio among those is Plum Creek, three and a half times.
Q. But you could have started with those and

adjusted, right?
A. No.
Q. Now, did you calculate the cost of debt for Scopac while doing your weighted average cost of capital in your big report?
A. We calculated a cost of debt based on industry capital structures and industry borrowing costs assuming that, in fact, you would have 20 percent leverage going

forward like the rest of the industry comps do.
Q. And what was that cost of debt?
A. Well, we used the industry cost of debt, which is about 7 percent, all in -- including long and short debt.
Q. But you chose not to use that as a starting point for doing your new issue note analysis?
A. It would have been completely irrelevant.
Q. I just have a few more questions. Mr. Daniel, did you hear Mr. Dean testify yesterday that lowering harvest rates in the short-term can maximize value?
A. I didn't.
Q. Do you agree with that?
A. That's exactly what Mr. Fleming does.
Q. You're saying Mr. Fleming agrees with that?
A. Well, what I'm saying is that what Mr. Dean is saying, you know, in and of itself is lowering harvest

rates in the short-term can maximize value is certainly true under certain scenarios. I would say that Jim Fleming's scenario, which is exactly what he does by lowering rates to about 81 million, board feet first nine years, he's letting the forest rest, and he can go back up to a sustained rate of about 100 million a year, does, in fact, maximize value if you cut all the trees.
Q. And do you agree with that?
A. Yes.
Q. So leaving aside the issue as to what the harvest rate would be, you agree that in the -- that in the short-term, the best way to optimize value would be to cut the harvest rate and let the forest grow and maximize, you know, the harvest for Scopac in the future; is that right?
A. There's no way that I could say it's the best way. It's a rational way because after cutting at over 200 million board feet in the '90s, dropping down to 160, which is clearly higher than sustainable, the forest really has no choice but to rest for a bit here for a while in order to make it economic to harvest it going forward. So I think that it's something that's required. There are many different scenarios beyond that under which you could manage the forest going forward.
MR. BRILLIANT: Thank you. I have nothing

further, Your Honor.
THE COURT: All right.

CROSS-EXAMINATION

BY MR. NEIER:
Q. Good evening, Mr. Daniel. David Neier on behalf of Marathon. Mr. Daniel, if all goes well, I'm going to be asking you questions only off of one document, which is your proffer, which you should have in front of you. And it's only two sections of your proffer which begins on paragraph 36 where you talk about the LaMont --
A. One second, I have to find it here.
Q. I'm sorry.
A. Okay.
Q. And it's followed by a section, I think, that's called Johnston Report.
A. Okay. So you'll have to give me the page references.
Q. Page 11, paragraph 36.
A. Okay.
Q. This is the rebuttal portion of your proffer with respect to Mr. LaMont; is that correct?
A. Yes.
Q. Now, you seem to have a problem with Mr. LaMont having a valuation date as of April 30, 2008; is that

correct?
A. Yes.
Q. What's wrong with having a valuation date as of April 30th, 2008?
A. Because it's in the future.
Q. Well, don't people have valuations, perspective valuations in the future all the time?
A. Well, no, they don't actually. It's pretty unusual, if not unprecedented.
Q. Aren't we all talking about valuations in the future here, respective valuations?
A. As of today, not as of a future date. I mean, we're not there yet.
Q. It seems like a semantics difference to me.
A. It's actually something that's fairly rigorously followed in the valuation business.
Q. But if I understand your testimony, it's okay or it's reasonable in your view for Mr. Fleming to have a valuation as of October 1st, 2007, and here we are today,

April 10th, 2007, six months later?
A. Well, it's possible to do a retrospective valuation, but it's impossible to do a predictive valuation at some future date by whatever means when you don't even know what's going to happen for the rest of the time.

Q. Aren't most of these valuations based on 10- to 50-year forecasts going forward?
A. Yes.
Q. Okay. I think Mr. Brilliant asked you and we established that you're not a timber expert; is that right?
A. Yes.
Q. And you don't do timber appraisals?
A. Correct.
Q. And were you present when Mr. LaMont testified that he's done over 200 timberland appraisals the past 15 years?
A. Well, I don't recall the comment, but I was present when he testified.
Q. Now, in paragraph 38 of your proffer you say -- you essentially say that the higher cost of harvesting the political pressure and the comprehensive planning that's present in the harvest levels that Mr. LaMont has set are not value maximizing; is that right?
A. Well, the higher cost harvesting and so forth is in quotes. That's from his report. I mean, we're just quoting his report. That's what he says justifies his lower harvest rates. And I've already said that lower harvest rates versus historical levels are probably required at this point, but he takes it to an extreme. I

don't -- I'm not saying anything about what his reasons are, whether they're right or wrong. I mean, I think that that's the way he explains it, but I disagree that he has to go that low.
Q. Well, you say the LaMont -- this is in paragraph 38. The LaMont report is not a relevant valuation for the purposes of this hearing. That's what you say; is that right?
A. Because it's not value maximizing.
Q. So I'm asking you: What do you know about the cost of harvesting, what do you know about political

pressure, and what do you know about comprehensive planning with respect to forests?
A. Those are Lamont's reasons, not mine.
Q. Well, you're disagreeing with them, aren't you?
A. No. I'm disagreeing with his conclusion.
Q. I believe you testified just a moment ago that Mr. Fleming and Mr. Dean are both reasonable to set the harvest rate low now to allow the forest to grow; is that right?
A. Lower than it has been historically because it's been overcut, but they actually set it at dramatically different levels. Mr. Dean starts at 5 million board feet; Mr. Fleming starts at 81.
Q. Let's look at the first sentence of paragraph

39. It says: "Marathon and MRC are plainly aware of the value being ignored in their conservative forecasts based on conservative non-value maximizing assumptions."
Now, we've already established you're not a timber expert, so I'm asking you, what do you find to be non-value maximizing in setting a conservative forecast?
A. Well, if you choose not to cut the trees, you don't get the cash flow. If you don't capture the cash flow or the potential cash flow if you changed your mind or somebody came in and cut more trees, you're ignoring value. That's what we mean.
Q. But you agree there should be a conservative forecast at this moment?
A. No, I believe that under the circumstances the timber noteholders have a right to receive full value.
Q. What is your experience in creating a harvest level business plan?
A. I already told you what my experience is.
Q. So you disagree with Mr. LaMont, but you don't have any experience in the field and you're not an expert in the field; is that right?
A. I'm working closely with a number of experts.
Q. So you're relying on other expert opinions for your own expert opinion?
A. Correct.

Q. I should say your other non-expert opinion?
A. Well, it's an expert opinion couched in this way.

Q. In paragraph 40 you take issue with Mr. LaMont not engaging in clearcutting and relying on more selective harvesting; is that correct?
A. Yes.
Q. What is your experience in looking at clearcutting versus selective harvesting?
A. Once again, I'm relying on my consultants.
Q. Okay. So it's not your expert opinion; it's somebody else's expert opinion. You're just regurgitating in your proffer?
A. I'm allowed to rely on their opinion. That's what I'm doing.
Q. But I'm asking you your basis for it, and your basis for it is not your opinion because you're not an expert in the field; it's somebody else's opinion?
A. You're losing me in that logic.
Q. Me, too. And on paragraph 41, you have a problem with Mr. LaMont not using any price appreciation in redwood. Can you tell me, are you an expert in price appreciation of forest products, including redwood?
A. No, I'm not.
Q. And are you an expert in species harvest mix?

A. No, I'm not.
Q. So once again, your justification for -- or your opinion is based on somebody else's work, not your own work?
A. It's based on, you know, my consultations with somebody that knows what they're talking about.
Q. Okay. Not you, though?
A. Well, I don't have the experience that somebody like Mr. Fleming does.
Q. We're just saying, you don't know what you're talking about?
A. No, I know what I'm talking about.
Q. Well, that's what you said, Mr. Daniel. I'm just repeating what you said.
A. No. I said that I was relying on someone who does know what they're talking about.
Q. All right, which means that you don't know what you're talking about?
A. That -- that doesn't follow at all.
Q. Okay. You say in paragraph 42 that Mr. Lamont's pricing is also extremely conservative, and his approach is not well supported. I think we

established you're not an expert in pricing, and you're not an expert in setting harvest levels and creating harvest level business plans; is that right?

A. Correct.
Q. Would you agree with me that timber prices, including redwood prices, are lower today than they were as of October 1, 2007?
A. That's my understanding.
Q. But you're relying on Mr. Fleming's use of pricing as of October 1, 2007; is that right?
A. (No response.)
Q. On paragraph 44, you criticize the comparable transactions that Mr. LaMont used which were outside of California; is that right?
A. Yes.
Q. Because of unique regulatory environment in California; is that right?
A. Yes.
Q. And you're not an expert in the unique regulatory environment in California, are you?
A. Correct.
Q. You're relying on somebody else's work for this opinion?
A. Well, I'm relying on consulting with someone so that I can understand what the regulatory environment is here.
Q. Okay. And were you present also when Mr. LaMont testified that he used these comparable

transactions and then took a one percent adjustment in his discount rate because of the unique regulatory environment in California?
A. Yes.
Q. And if we can turn to the section that begins on page 15 of your proffer that talks about the Johnston report.
A. Yes.
Q. Do you have that in front of you?
A. Yes, I do.
Q. Okay. Now, do you know what the value of the Palco mill is?
A. No.
Q. But you make an assumption here in paragraph 50

that the mill is worth $40 million; is that right?
A. It's based on just math, just like the enterprise.
Q. Were you present when Mr. Breckenridge testified, and so far as I know there's no rebutting testimony, that the mill is worth about $25 million?
A. I'm not sure that I was, but that doesn't surprise me.
Q. Does that seem unreasonable to you?
A. I don't know. I haven't tried to value it. It wasn't part of my mandate here.

357

Q. Now, you have an implied timberlands valuation which you base on the Johnston report; is that right?
A. I think it's just math as well, to be honest.
Q. Let's take a look at the math. You have an equity infusion by MRC here for $200 million?
A. Yes.
Q. And from that, you derive an implied equity value of Newco?
A. Yes.
Q. And then you add something to it called the Newco line of credit. What's that?
A. Well, that's the expected credit line for the new company.
Q. How did you derive that?
A. I'm not sure what document it comes from.
Q. Okay. Well, Newco -- have you heard the testimony that Newco is going to put 7.5 million into -- in capital expenditures into the mill to improve the mill? Have you heard Mr. Dean's testimony to that effect, Mr. Breckenridge's testimony to that effect, Mr. Johnston's testimony to that effect?
A. I heard some testimony that says that the mill needs 7 and a half million. I don't recall anybody saying whether they were going to do it or not.
Q. Okay. And -- but let's assume it's going to happen. That's not present in this implied timberlands valuation, is it?

358

A. You're absolutely right.
Q. And where is it that says that the secured tax claim of Humboldt County of in excess of a million dollars, where is that in this --

A. That's not here either.
Q. Okay. So that has to be paid to get this case out of bankruptcy? It's not reflected here?
A. That's correct.
Q. What about the administrative and priority claims that have to be paid to get this case out of bankruptcy; is that something that Newco is also paying?
A. That's not included in this calculation.
Q. What about the professional claims of all the Scopac lawyers and all the Scopac professionals that have to be paid in this case; is that something that also has to be paid to reorganize Scopac?
A. One would think.
Q. All right. Is that reflected in this valuation?
A. Well, this is not a valuation. It's just -- it's just math.
Q. But it's math that doesn't include --
A. You're correct.

Q. -- all the expenses that have to be paid as part of this reorganization process, correct?
A. You're absolutely correct.
Q. And would that tend to lower the implied value of the -- of Newco that you're trying to derive here?
A. It probably is, yes.
MR. NEIER: I have no further questions.
THE COURT: That's this table. Anything from the committee?
MR. LITVAK: Yes, Your Honor. Max Litvak, Pachulski Stang, on behalf of the creditor's committee. And I'll be brief.

CROSS-EXAMINATION

BY MR. LITVAK:
Q. Good evening, Mr. Daniel.
A. Hello.
Q. Mr. Daniel, I think I heard you testify that you have issued over the course of your career somewhere in the range of 500 to 1,000 separate valuations; is that right?
A. Well, after 20 years I've done a lot of them, yes.
Q. Okay.
A. And what I said was more than 500.
Q. And up to a thousand?

A. It could be that much, yes.
Q. Okay. And just to put that into context, in issuing all those numerous valuations, have you ever used preliminary expressions of interest that are non-binding in calculating the discount rate in that valuation?
A. Nothing that I recall.
Q. You don't recall ever doing that before?
A. Well, I think you asked me the same question in my deposition.
Q. I did.
A. And I didn't recall any then either, so nothing I recall.
Q. Okay. And have you ever seen it done before in any valuation?
A. Well, it's actually quite common to derive implied rates of return by that methodology. You know, that may or may not be done in connection with a particular valuation. But as a matter of fact, I mean, I do a lot of early stage company work, for example, and with venture financing sometimes that's the only way that you can figure out what the rates of return are. Sometimes they're pretty dramatic. But it's something that I've done frequently in that respect.
Q. Okay. Now, Mr. Daniel, do you still have your deposition transcript up there?

A. Yes.
Q. I would like to refer you to page 375, line 16, question: "So in your own personal experience, you have issued a final valuation report before where you utilized preliminary expressions of interest in calculating the discount rate? That's a yes or no. Have you ever done that?"
Answer: "No."
Question: "Okay. Have you ever seen it done before in any valuation?"
Answer: "No." Was that true testimony when you gave it?
A. As far as I remembered at that point, yes.
Q. Thank you. Now, you state -- and I'm not going to refer you back to the report to save time. But in your big report, do you state that the preliminary indications of interest came from buyers familiar with

the timberlands and who have conducted substantial due diligence? Do you recall that?
A. Yes.
Q. Is that a true statement?
A. Well, I've talked about the fact that I have no direct knowledge of the extent of due diligence. There's been due diligence performed, but, you know, I can't describe to you the nature of it.

Q. Okay. Can we go to page 33 of your big report.
A. Okay.
Q. And do you see in that -- I think it's the fourth diamond down, it says: "These indications of interest from buyers that are familiar with Scotia timberlands and have conducted substantial due diligence are highly reliable indications of value"?
A. Yes.
Q. Is that a true statement?
A. I believe it to be true.
Q. Okay. Do you have any personal knowledge as to who specifically, which individuals or representatives of the three bidders, conducted due diligence?
A. Well, as I said, I have no personal knowledge of the extent or nature of their due diligence.
Q. Okay. So you don't know how many people were involved?
A. Absolutely not.
Q. You don't know how much time they spent on it?
A. I don't.
Q. Have you ever been to Scopac's timberland?
A. No, I haven't.
Q. Paragraph 19 of your proffer, page 7: "Houlihan Lokey believes these bids are particularly helpful in understanding the valuation of Scotia Pacific's

timberlands as they were submitted by sophisticated buyers with a history of significant timberland acquisitions and expertise." Do you see that?
A. Yes, I do.
Q. Is that an accurate statement?
A. Yes.
Q. Do you understand that one of the bidders is Beal?
A. Yes.

Q. Does Beal have a history of significant timberland acquisition and expertise?
A. He's been involved with the timber notes for a long time obviously, and he's pretty familiar with Scopac as a result. I believe Beal Bank may have other timber interests, but I'm not sure what the nature would be. I think that as a practical matter because of his longtime association as a timber noteholder or his association as a timber noteholder, I believe that has bought some of them in the market, that he's got some information that he wouldn't have otherwise.
Q. But you don't know one way or the other?
A. No, I don't.
Q. Okay. So this statement that each of the bids has been submitted by sophisticated buyers with a history of significant timberlands acquisitions and expertise,

that's not entirely accurate, is it?
A. Well, I think it's prettier accurate.
MR. LITVAK: Thank you, Your Honor. That's all I have.
THE COURT: All right. That's this table.
CROSS-EXAMINATION
BY MR. DOREN:
Q. Good evening, sir. I promise to be brief. I'm Richard Doren on behalf of Scotia Pacific, LLC. Let me also apologize for touching again on a few things that you talked about extensively. I don't intend to go into them. I'm just trying to frame the issues I do want to go into.
A. Okay.
Q. And the first thing I want to make sure I understand is the overall time frame. You first became involved on a matter in this matter on February 29th; is that correct?
A. Correct.
Q. I'm sorry, we're talking over each other.
A. I'm sorry.
Q. And that same day you received a draft report; is that correct?
A. Two draft reports and DiMauro's declaration.
Q. And then that report was completed and

submitted on the 14th?

A. Correct.
Q. And then your proffer was completed and submitted on April 4?
A. I think that's correct.
Q. All right. Now, you've testified that you've adopted and relied on Fleming's -- Mr. Fleming's report and analysis for all elements of the timber cash flow. Do I have that right?
A. Yes.
Q. And so, for example, you haven't done an independent assessment of harvest levels, correct?
A. No.
Q. Nor have you done an independent investigation on log price trends or appropriate log pricing levels?
A. No.
Q. Have you -- and you have not done an independent investigation of harvest costs?
A. No.
Q. Nor the impact of cultivars or replantings on future harvest projections?
A. You're becoming increasingly far afield from my knowledge.
Q. I tried to start towards the core and then just make sure. For all I knew, you were fascinated by the

replanting process. And I assume, too, that you did not have any input in or evaluate the way that Mr. Fleming arrived at his discount rate?
A. I didn't even talk to him about it.
Q. Now, earlier today you said that you rely on Mr. Fleming the way that Mr. Yerges realize on Dr. Reimer. Do you recall that general statement?
A. Yes. Although, I mean, there are two experts for Yerges, and I only have -- well, directly Mr. Fleming, but other forestry consultants as well. So that's not quite the same thing.
Q. You were about to say Mr. Yerges got two and you only got one.
A. Well, I didn't only get one. I had some other ones.
Q. Now, do you know the nature of the working relationship between Mr. Yerges and Dr. Reimer?
A. No, I don't.
Q. And do you know how many hours they have spent together on this matter, physically together?

A. No, I don't.
Q. Do you know whether they have spent time together on the Scotia Pacific properties meeting with the company's foresters?
A. No, I don't.

367

Q. Do you know whether they have spent time together looking at GIS data, such as light arm maps from the company's data?
A. No.
Q. Do you know how long the two of them have been working together on this project?
A. No, I don't.
Q. And do you know whether Mr. Yerges spent substantial time reviewing and understanding Dr. Reimer's methodologies?
A. I would expect him to have spent time on it, yes, but I don't know.
Q. And you would have also expected that he would have spent time understanding Dr. Reimer's model?
A. Well, from what I hear, that would have been difficult.
Q. But you don't know?
A. No, I don't know.
Q. Nor do you know whether he spent time reviewing and discussing Dr. Reimer's -- the output from his model?
A. No.
Q. So when you say you relied on Mr. Fleming like Mr. Yerges relied on Dr. Reimer, you don't actually know exactly how they relied on each other, do you?
A. Well, I'm talking at a higher level up.

368

Q. Okay.
A. Mr. Yerges didn't come up with the timber cash flows. He relied on someone else to help him come up with them.
Q. Have you done any investigation on the difference between a linear mathematical model like Woodstock or a spacial simulator like Options?
A. Certainly not.
Q. Have you ever reached any conclusions as to whether Mr. Fleming should have been using a computer model?
A. Well, I think that Mr. Fleming -- I have

thought about it. And you know, I don't know whether I've reached conclusions or not, but I do have some thoughts. And -- if that's responsive to your question.
Q. Well, let me -- let me try and help. And if you're not happy with it, you can do more. But you've thought about it, but you don't have any conclusions at this point; is that right?
A. No, I have some conclusions. I mean, it's an entirely different approach than Mr. Fleming is taking. And he hasn't tried to do it in quite the same way that Mr. Reimer has done it or even Mr. LaMont, although I'm not sure exactly what Mr. LaMont did do. Mr. Fleming has actually tried to simplify things a bit, I think, and

which seem to me to be a rational way of approaching it and also something that would speak eloquently to someone, you know, who is looking at things from an investor's point of view as I am here. I think most investors don't have quite the grasp of timberland that Mr. Fleming does.
Q. Including timberland investors?
A. I think that that's undoubtedly true.
Q. And is part of the simplification using a ten-year projection period as opposed to a 50-year projection period, from your perspective?
A. Well, I think that makes more sense to try to talk about what the property is capable of doing as opposed to what you actually will do in every year. I mean, that can be modeled. But as a practical matter, the way the forest is actually managed and harvested is the plans are submitted, and they may be submitted five years in advance. And I've looked at Scopac's harvest plan map, for example, and have some idea of where they might plant and harvest. That doesn't mean they're actually going to harvest in those areas. I mean, you know, things will evolve and, you know, be adapted along the way. And I think it's somewhat presumptuous to think you can forecast every year out precisely for 50 years. I think it's more rational to try to take an average kind

of approach, which Mr. Fleming has done.
Q. So if the industry standard is to use 50-year harvest projections, the industry is acting irrationally?
A. No. I think that those 50-year harvest

projections are done for different purposes.
Q. Let me ask, if I may, how long is a crop rotation, if you will, among redwood trees?
A. If you clearcut, you can't cut again. You know, it has to grow up, and it takes a while.
Q. How long?
A. 50 years.
Q. Excuse me? I just didn't hear you.
A. I'm sorry. It would be 40 or 50 years.
Q. Thank you. You testified earlier that you're not qualified to critique Dr. Reimer's report, correct?
A. Correct.
Q. And, in fact, you haven't read Dr. Reimer's report, have you?
A. Correct.
Q. And if I could direct your attention, please, to paragraph 66 of your proffer. It's under the heading Yerges Report. Why don't we start, and I'm sure it will join us here.
Let's start, in fact, if we can, at paragraph 65. It stated that the "Yerges report utilizes timber

inventory details and a 50-year harvest forecast from Don Reimer (50-year forecast)." Do you see that?
A. Yes.
Q. And that is referring to Dr. Reimer's report that you haven't read, correct?
A. Correct.
Q. "A number of key assumptions contained in the 50-year forecast appear unreasonable, including timber growth." Do you see that?
A. Yes.
Q. Now, you had not ever read Dr. Reimer's report when that statement was made in this proffer, correct?
A. I have read Mr. Yerges's report.
Q. And then you go on to say that a number of key assumptions contained in the 50-year forecast appear unreasonable, including timber growth, price appreciation, and EBITDA margin expansion?
A. Yes.
Q. Does Dr. Reimer's forecast contain any assumptions on either price appreciation or EBITDA margin expansion?
A. Those -- the referenced assumptions referred to the assumptions that are stated in Mr. Yerges's report.

Q. In the next paragraph you state: "The harvest forecast relied upon by Yerges is extremely aggressive in

terms of growth and harvest levels over the 50-year forecast." You see that?
A. Right.
Q. You're not a timber expert, right?
A. No, I'm not.
Q. "The first ten years of the forecast reflect an average harvest level of approximately 85.2 million board feet per anum, which is in line with recent harvest levels and consistent with Jim Fleming's estimate of 83.2 million board feet per anum during the same period."
A. Yes.
Q. Do you see that? That's what you called a little while ago resting the forest?
A. Yes.
Q. Then it goes on to say: "However, there is an approximate 63 percent increase in average annual harvest levels in the final ten years of the forecast Yerges relied upon" -- again, that would be Dr. Reimer's forecast?
A. Correct.
Q. -- "resulting in an average annual harvest level of 139.2 million board feet. This unrealistic and enormous growth in harvest levels implies" -- and let's just pause there. You've never read Dr. Reimer's report, correct?

A. No, I've read Mr. Yerges's report.
Q. You're not a timber expert, correct?
A. Correct.
Q. And you've made no effort to dig into Dr. Reimer's projections and understand the basis for them, correct?
A. Correct.
Q. Thank you. You make mention at paragraph 82 of -- your proffer -- of various solicitation efforts by UBS. Do you see that generally?
A. Yes.
Q. Were you involved in those efforts at all?
A. No.
Q. Have you talked to anybody at UBS about those efforts?

A. No.
Q. Have you talked to anyone that received any materials from UBS about those efforts?
A. No.
Q. Did you know anything about those efforts before February 29?
A. No.
Q. Have you seen any documents related to those efforts?
A. Yes.

Q. Are those the -- is that the source of the information for what's set out here in paragraph 82?
A. Well, it was referred to in some of the other materials that I have access to; but generally, yes.
Q. Thank you. If we can go back to paragraph 76 of your proffer, please. And does this paragraph refer to your critique of Mr. Yerges's analysis of comparable sales transactions?
A. Yes.
Q. And if we can just take a moment to look at it. You say: "In addition, the various transactions, companies, and returns relied upon by Mr. Yerges's comparable are either not comparable, relevant, reliable, or are not subject to independent verification. Of particular significance, not one of the transactions relied upon involved timberland in California."
Now, if we could please flip over to Table 24 from Mr. Yerges's report. This is at page 37.
A. Yes.
Q. Do you see that this table contains only transactions that occur in the state of California?
A. Yes.
Q. And if we could go back, please, to paragraph 76 of your declaration. The next states: "Timberland in California, let alone Humboldt County." If we can go

back once again to Table 24. Leaving aside the listing at number one, you look at transactions 2, 11, 12, 13, and 15, those are all transactions that occurred in Humboldt County, correct?
A. Yes.
Q. If we can go back, please, to paragraph 76 of your declaration. The last sentence says: "Moreover,

none of the transactions have a high concentration of redwood timber." And again, if we can please go back to paragraph 76. And do you see that transaction 3, for example, is 64 percent redwood; transactions 4 and 5 are 46 percent; transaction 7 is 46; transaction 8 is 45; transactions 9 and 10 are pure redwood. Do you see that?
A. Yes, I do.
Q. So those statements in paragraph 76 in your declaration are mistaken, aren't they?
A. They would appear to be.
Q. Did you write this paragraph?
A. No.
Q. Who wrote this for you; someone on Mr. DiMauro's team?
A. Well, I talked about who helped me write this.
Q. All right. Thank you very much, sir.
MR. DOREN: No more questions.
THE COURT: Does the debtor have any

questions?
MR. LAMB: No, Your Honor.
THE COURT: All right. Redirect. How much time do you think you need?
MR. CLEMENT: Very brief, Your Honor.
THE COURT: Okay.
REDIRECT EXAMINATION
BY MR. CLEMEMT:
Q. Mr. Daniel, on cross-examination you were asked if you had seen anything relating to the Beal Bank bid; is that correct?
A. There were several questions about the Beal Bank bid.
MR. CLEMENT: Your Honor, may I approach?
THE COURT: You may.
MR. CLEMENT: May I tender this up, Your Honor?
THE COURT: You may.
Q. (By Mr. Clement) Mr. Daniel, you recognize the document that I've just tendered up to you?
A. Yes.
Q. What is it?
A. It's what we call the big chart.
Q. No, the document I just tendered up.
A. I see. I'm sorry. This is the proffer of

Jacob Cherner.
Q. Have you seen it before?
A. Yes, I have.
Q. Have you read it carefully?
A. Yes.
Q. When you were asked earlier if you had any information about the Beal bank bid, is this the document you were referring to?
A. No.
Q. Look at the back.
A. Yes, the exhibit is the document I was referring to.
Q. And as to that, you read through it carefully?
A. Yes.
Q. And is that what -- when you were asked earlier what basis you had to believe that the Beal bank bid had become firmer, is this what you were referring to?
A. Yes.
Q. What, if any, opinions, do you have about the firmness of the Beal bank bid at this point?
A. Well, I think --
MR. BRILLIANT: Your Honor, I'm going to object to the line of questioning. This is a legal question. He's not capable of answering this.
THE COURT: I don't think he's asking for

a legal opinion. He's just asking in the market what he thinks of the appraiser, of the firmness of the bid, and so -- and I -- that's all I'm going to take it as.
MR. BRILLIANT: Thank you, Your Honor.
A. This looks pretty buttoned up to me.
Q. Now, sir, we've just put up on the screen what I call the revised big chart. And let me take you through just a few things. You were asked whether you had any basis to rely upon what I was going to -- what I'm going to call industry information. So let's start at the top of the chart called -- where it talks about beginning inventory.
A. Okay.
Q. Do you see the top line across there?
A. Let me just get where I can read these here on the screen.
Q. Is it on the screen in a way that you can read it?

A. Well, no, but I have a hard copy here. I just have to find it. Okay.
Q. The beginning inventory is across the top of the page.
A. Yes.
MR. CLEMENT: Your Honor, are you able to read the one on the screen? If not, I've actually got

extra copies.
THE COURT: I can read it. I've got it right here.
Q. (By Mr. Clement) So, Mr. Daniel, with Yerges, Fleming, Daniel, LaMont, is there any similarities between the beginning inventories assumed?
A. Yes.
Q. Are they quite close or quite distant?
A. Well, they're fairly close.
Q. Moving on down to first ten-year harvests, what does Mr. Yerges assume?
A. 85.2 million board feet.
Q. And what did Fleming and Daniel assume?
A. 83.2 million board feet.
Q. LaMont is somewhat lower; is that correct?
A. Yes.
Q. Approximately 25 percent lower?
A. Yes.
Q. Dean is lower than that?
A. Correct.
Q. Do you take any comfort from the fact that Mr. Fleming --
THE COURT: I'll take you up on that. Do you have a copy of this?
MR. CLEMENT: Yes, Your Honor.

Q. (By Mr. Clement) Sir, do you take any comfort from the fact that Mr. Fleming's estimate of harvest rate for the first ten years is essentially the same harvest rate that the debtor's experts came up with?
A. Yes.
Q. Now, sir, moving on down, you've been asked -- moving on down to about the middle of the page where it says "discount rate," you've been asked a number of questions about the discount rate you chose to use in your DCF analysis?

A. Correct.
Q. Am I correct that according to this chart Mr. Yerges used 9 percent nominal discount rate?
A. These are adjusted, by the way, for inflation because he actually used a real discount rate, so we're adding back an inflation assumption.
Q. But expressed in nominal discount rate terms, Mr. Yerges used 9 percent?
A. Yes.
Q. Fleming used 9 percent?
A. Yes.
Q. You use something higher than Fleming by 1.5. You use 10.5 percent?
A. Correct.
Q. Am I correct, the higher the discount rate, the

more it depresses value?
A. Yes.
Q. Mr. LaMont used 10 percent. That is less than you?
A. Yes.
Q. So Mr. Lamont's number -- or your number depresses value more than Mr. Lamont's discount rate?
A. Correct.
Q. Mr. Dean used a 10 percent discount rate; is that correct?
A. Correct.
Q. Lower than yours?
A. Yes.
Q. Do you have any opinion about the reasonableness of the discount rate you have chosen?
A. Well, I think it's eminently reasonable and conservative, and that's why we used it.
Q. Now, sir, moving on to the timber notes. How much is the EBITDA coverage for about the next four years generally on the new timber notes?
A. Well, it never gets below ten times.
Q. And it's sometimes as high as 13; is that correct?
A. It starts out high, yes.
Q. Do you have a general opinion about the

creditworthiness of Newco as projected in the MRC business plan?

A. Well, yes, I think they're not creditworthy, as I said, in my testimony in cross.
Q. Now, sir, are you familiar with the terms of the timber notes?
A. Yes.
Q. Are you familiar with the current credit market?
A. Yes.
Q. You're familiar with the credit quality of Newco going forward?
A. Based on their projections, yes.
Q. What is your fundamental opinion about whether it would be possible to sell those timber notes in the marketplace?
A. I think it would be impossible at any price.
MR. CLEMENT: We have nothing further, Your Honor.
THE COURT: Okay. You can step down.
MR. CLEMENT: Your Honor, by the way, we offer into evidence the Jake Cherner proffer. We think it's been authenticated. We would offer it into evidence, and it will be marked.
MR. NEIER: Your Honor, this is not

Mr. Cherner.
THE COURT: What?
MR. NEIER: This is not Mr. Cherner. He's offering a proffer of somebody else through an expert witness. This doesn't make any sense at all.
THE COURT: We did have some question about the admissibility of this proffer. I'm now prepared to rule that we'll excise the portion of the paragraphs that dealt with the confidential offer or the -- you know, the confidential --
MR. NEIER: The mediator.
THE COURT: The mediator. It's confidential as part of the mediation. But the other objections are overruled. It goes to the weight to be given to the witness. You can step down.
MR. NEIER: That would just be paragraph 62, for the record.
THE COURT: Right.
MR. BOLTON: Your Honor, I'll be happy to handle that objection.
THE COURT: I think the first two

sentences of 62 have nothing to do --
MR. NEIER: Yeah, it was only the sentence --
THE COURT: It's after that. So the first

two sentences stay in, and after that the -- in other words, the synergy stuff stays in. The rest of it goes out.
MR. NEIER: That's a more precise way of dealing with it, Judge.
THE COURT: All right. I don't know that we have a witness that would be effective to start at the present time; is that correct?
MR. CLEMENT: Your Honor, I'm being asked a question, but give me a moment.
MR. NEIER: Your Honor, you may not have effective attorneys.
THE COURT: Or an effective judge. We've always had an effective staff. That's one thing.
MR. GREENDYKE: Judge, I didn't hear your question. Mr. Clement is conferring with Mr. Bolton. Did you ask whether I had more witnesses?
THE COURT: I know you have more witnesses. I didn't know whether it would be effective to start them now.
MR. GREENDYKE: No, we don't have one here tonight.
THE COURT: Oh, okay, so we're going to break then until tomorrow at 9 o'clock. Is that still a good time for everyone? We'll get the call through -- if

we could have the call through at, say, ten till 9:00, that would be nice. Thank you.

THE STATE OF TEXAS:
COUNTY OF NUECES:

I, SYLVIA KERR, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts stated by me in the caption hereto are true; that the foregoing proceedings were taken by me in Stenograph and later transcribed from Stenograph to typewriting under my supervision.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

WITNESS MY HAND, this the ______ day of ________________, 2008.

____
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